

17
FOR OFFICIAL USE.



MINISTRY OF HEALTH.

ADVISORY COMMITTEE ON WATER

SECOND REPORT OF LEGISLATION SUB-COMMITTEE

LONDON :
PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE.

To be purchased directly from H.M. STATIONERY OFFICE at the following addresses :
Adastral House, Kingsway, London, W.C. 2; 120, George Street, Edinburgh;
York Street, Manchester; 1, St. Andrew's Crescent, Cardiff;
15, Donegall Square West, Belfast;
or through any Bookseller.

Price 9d. Net.



Presented by

The Ministry of Health

October

1929



22900393199

Med
K22491

FOR OFFICIAL USE.



MINISTRY OF HEALTH.

ADVISORY COMMITTEE ON WATER

SECOND REPORT OF LEGISLATION SUB-COMMITTEE

LONDON :
PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE.

To be purchased directly from H.M. STATIONERY OFFICE at the following addresses :
Adastral House, Kingsway, London, W.C.2 ; 120, George Street, Edinburgh ;
York Street, Manchester ; 1, St. Andrew's Crescent, Cardiff ;
15, Donegall Square West, Belfast ;
or through any Bookseller.

Price 9d. Net.

32-289.

[1929]

| | |
|-------------------------------|-----------|
| WELLCOME INSTITUTE LIBRARY | |
| Coll. | welM Omec |
| Call | |
| No. | WA |
| | |
| | |
| | |
| | |

ADVISORY COMMITTEE ON WATER

SECOND REPORT OF LEGISLATION SUB-COMMITTEE.

1. The accompanying Report has been prepared by the Sub-Committee appointed by the Advisory Committee on Water to consider the need for amending legislation. It has been submitted to, and endorsed by, the Advisory Committee and is published at their request.

2. The conditions of water supply are governed by a large body of detailed legislation, which is constantly in process of growth. The general code for this purpose dates from 1847, over 80 years ago. There has been no comprehensive revision since that date. A partial revision has been made, but even that so long ago as 1863. In the meantime, the measure and circumstances of water supplies have undergone great changes. Water undertakers, whether public authority or company, have obtained new provisions from Parliament from time to time, but it has depended on the initiative and opportunity of individual undertakers how far their code of conditions has been revised, and the various private Acts, having been obtained at different dates, differ much in their provisions. The position is, therefore, far from satisfactory. The need for a consolidated code has long been felt, and the object of the Sub-Committee has been to suggest what this code should contain, to recommend the contents of a new Waterworks Clauses Act. What they have done, in the main, is to put together the best that has been adopted in recent Parliamentary practice, and for that reason they hope that their recommendations will meet with general acceptance, even though there may be some proposals which may not immediately appeal to all the bodies concerned.

3. The following are some of the more substantial proposals :—

- (1) "Domestic supply" should be defined so as to include water closets and baths of ordinary size, and special charges should not be made for them. When the early Water Acts were passed, these conveniences were exceptional. Now they are common, and special charges for them no longer accord with modern conditions.
- (2) Supply pipes under highways from the main to private premises are generally the property of, and are maintained by, the private owner, though there are now many instances to the contrary. The Sub-Committee are satisfied that, whatever may have been the arguments

for and against the practice in earlier days, in modern times, with the far higher standard of highway construction, it should certainly be the rule that the provision and maintenance of these supply pipes should be regarded, like that of the mains and other works, as part of the normal operating costs of the undertaking and the burden distributed proportionately over the whole body of the consumers. Further, the ownership of existing supply pipes and the liability to maintain them should be transferred to the water undertakers where this is not now the case. Provisions under which the private person can break up the highway should not be continued.

(3) Fuller provisions are recommended for penalising the waste, misuse or contamination of the water supply, including power to the water undertakers to make and to enforce byelaws for the purpose and, on default, to repair at the cost of the consumer fittings for the maintenance of which he is responsible.

(4) Proposals are put forward for revising the financial provisions of the Act of 1847, which relate to water companies, including the establishment on a more definite footing of the relationship of the reserve fund enjoined by that Act and the contingency fund permitted by the Companies Clauses Act of 1845.

(5) Measures are suggested for facilitating and cheapening the means of revision. Most of these matters can now be dealt with by Provisional Order; for some, a private Bill is necessary. The Sub-Committee suggest that the procedure should be by Order, to be made, of course, only within limits specified by Parliament. For the ample safeguarding of all interests, if an objection is made to an Order and is maintained, it should become Provisional and should be subject to confirmation by Parliament as though the proposals had been embodied in a Bill.

(6) In addition to proposals for revising the Waterworks Clauses Acts, the Sub-Committee put forward a number of detailed amendments of the general statutory position of water undertakings, including provisions as to the furnishing or purchase of bulk supplies and the construction of service reservoirs.

Ministry of Health,

September, 1929.

Advisory Committee on Water.

The Members of the Committee, which is assisted by officials of the Ministry of Health, are:—

ALD. A. R. ATKEY, J.P., Lord Mayor of Nottingham and Chairman of Nottingham Corporation Water Committee.

MR. A. B. E. BLACKBURN, B.Sc., M.Inst.C.E., Engineer and General Manager, Sunderland and South Shields Water Company.

MR. A. E. CORNEWALL-WALKER, M.Inst.C.E., F.C.I.S., Managing Director, East Surrey Water Company.

LIEUT.-COL. J. R. DAVIDSON, C.M.G., M.Sc., M.Inst.C.E., Water Engineer, Liverpool Corporation Waterworks.

MR. F. W. MACAULAY, M.Inst.C.E., late Chief Engineer, Birmingham Corporation Waterworks.

MR. C. H. PRIESTLEY, M.Inst. C.E., late Water Engineer, Cardiff Corporation Waterworks.

MR. WILLIAM TERREY, General Manager, Sheffield Corporation Waterworks.

SECOND REPORT OF LEGISLATION SUB-COMMITTEE.

CONTENTS.

| | PARAGRAPHS. |
|------------------------------------------------------------------------------------------------------------------|-------------|
| I. INTRODUCTORY | 1-6 |
| II. WATERWORKS CLAUSES ACTS, 1847 & 1863 | |
| The Present Position | 7-10 |
| The Obligation to Supply | 11-18 |
| Supply Pipes | 19-39 |
| Supplies for Domestic and other Purposes | 40-69 |
| Waste, Misuse, Undue Consumption and Contamination | 70-92 |
| Financial Provisions Affecting Companies | 93-105 |
| Lands | 106-116 |
| Provisions excluded from Review | 117-120 |
| III. PROCEDURE TO IMPLEMENT THE SUGGESTED REVISION OF THE WATERWORKS CLAUSES ACTS | 121-126 |
| IV. GENERAL LAW RELATING TO WATER SUPPLY | |
| Introductory | 127-138 |
| Scope of Suggested Procedure by Order | 139-172 |
| Water Provisions of the Public Health Acts.. .. . | 173-193 |
| Other General Law Amendments | 194-207 |
| APPENDICES. | |
| A. Draft clauses embodying the proposed revision of the Waterworks Clauses Acts | |
| B. Comparative reference table, showing scope of the proposed revision of the Waterworks Clauses Acts | |

I.

INTRODUCTORY.

1. The Legislation Sub-Committee appointed to consider and report to the Advisory Committee upon the detailed amendments of the existing water legislation which appeared to them to be desirable, wish to submit the following Report.

2. The Legislation Sub-Committee were appointed by the Advisory Committee in October, 1923. In January, 1925, they submitted a Report on measures for the protection of underground water, which was adopted by the Advisory Committee and published in March of that year at the instance of the Ministry of Health.

3. In the course of their wider enquiry into water legislation generally, the Sub-Committee have had under review the Waterworks Clauses Acts, 1847 and 1863, the Public Health Acts and other general statutes affecting water undertakings collectively, the Model Bills and Clauses of the House of Lords, and numerous provisions which have become or are becoming common in local water legislation. The object of this Report is to put forward the recommendations, arising from that enquiry, to which they feel that effect should be given at the earliest opportunity. It has not been possible to examine in equal detail the whole field of the law relating to water supply, without delaying the possibility of amending legislation in the directions in which that legislation is most urgent. In this Report, however, and their earlier Report on Underground Water, the Sub-Committee have endeavoured to cover all the more essential features of the water law and to outline all the more vital needs for its amendment or extension.

4. The principal statute governing the conditions of water supply is more than eighty years old. The only general amending statute is itself sixty-five years old. The half century which followed it has been conspicuous for the intensive development of efficient water supply throughout the country and an enormously increased demand consequent upon improved standards of sanitation and amenities. Apart from particular enactments devoted to particular needs, the meeting of the new requirements and changing conditions has rested with the initiative of the individual undertaker, and has been effected by local legislation. The position of each undertaking has come to vary, therefore, partly with the status of the undertakers—the available powers and procedure differentiating between company, local authority or joint board; partly with their resources and prosperity—the costs of private legislation often prohibiting the small undertaker from keeping abreast of his requirements; partly with their initiative in continually modernising the conditions of their undertaking. The bald statement of the position is sufficient to reveal the problem.

5. The Sub-Committee are convinced that the need for new general legislation is urgent, and they recommend that it should take two forms. The first essential is the enactment of a modernised Waterworks Clauses Bill for uniform incorporation by the undertakers, the second a general statute amending and equalising the procedure available to them in obtaining statutory powers and at the same time giving general application to provisions which it is felt should be uniformly operative.

6. The detailed scope of the legislation suggested is reviewed in this Report. Among the more general topics to which it will be seen to relate may be mentioned the liability of the consumer in connection with his supply pipe under the highway, the extent of the obligation of the undertaker to supply, the levy and recovery of rates, the differentiation of domestic, quasi-domestic and non-domestic supplies, the prevention of waste and contamination, and the financial provisions relevant to company undertakings. Attention is particularly drawn to the question of the simplification and cheapening of procedure, and a brief survey is given of some of the more important water provisions of the Public Health Acts.

II.

THE WATERWORKS CLAUSES ACTS, 1847 AND 1863.**The Present Position.**

7. It is necessary to emphasise the essential part which the Waterworks Clauses Acts continue to play in the water legislation of the country. The Acts or Orders of nearly every company, local authority or joint board supplying water under special powers incorporate their provisions. The Public Health Act, 1875, applies the main substance of them to those local authorities who operate only under their general powers to supply. It incorporates in toto the Act of 1863 and those sections of the Act of 1847 which relate to the breaking up of streets, the laying of communication pipes, the waste or misuse of water, the fouling of water, and the payment and recovery of water rates.

8. With more than sixty years of progress and development in water supply, these provisions have become quite inadequate to meet the requirements of the modern water undertaking. Their inadequacy has been partially met, in the absence of any general revision of the Acts, by the undertakers themselves in clauses necessarily designed in relation to their own particular requirements. Difficulties tend to be common, particular solutions are found to be workable and are approved by Parliament, and a wide range of common-form clauses arises, applicable in practice to a large proportion of the existing undertakings, but not embodied either in the Clauses Acts or in the general law. From time to time many of these clauses have been incorporated in the Model Bills and Clauses of the House of Lords; others, equally recognised in practice, still await incorporation. The general result of the lack of amending legislation and the dependence of the requisite powers upon local initiative has been to produce anomalies, both in powers and in procedure, for which there is no logical or other justification. The development of new conditions and new problems in water supply calls for a revised general code of clauses, to be applied as uniformly as possible to every statutory water undertaker.

9. With this end in view the Sub-Committee have examined the Waterworks Clauses Acts in detail, with full regard to the additional clauses already embodied in the House of Lords' Model Bills and Clauses and to those further provisions which Parliamentary practice commonly allows in local legislation. The amendments and additions which they recommend for immediate enactment are discussed generally in the review of the Acts which follows, and are given in detail in the first Appendix to this Report (Appendix A). With the important exception of those cases in which verbal amendment of the existing provisions is advocated,

no particular significance is attached to the precise form in which the appended clauses are put forward. The method of embodying the recommendations in draft clauses has been adopted in this part of this Report, mainly for convenience of discussion and to express more accurately the exact effect of the suggestions which the Sub-Committee offer.

10. In the second Appendix (Appendix B) a comparative table is given showing by reference the effect of the Sub-Committee's findings on each of the existing sections of the Acts.

The Obligation to Supply.

11. The obligation to supply water for domestic purposes is dealt with by sections 35 and 36 of the Clauses Act of 1847. Section 35, after imposing upon the undertaker the duty of maintaining a sufficient supply of pure and wholesome water for the domestic use of all who are entitled to it and are willing to pay water rate for it, goes on to provide—

- (a) That the supply is to be constantly laid on at sufficient pressure to ensure that the water shall reach the top storey of the highest house within the limits of supply, unless the Special Act provides that the water need not be constantly laid on under pressure.
- (b) That a requisition for a supply shall be binding on the undertakers, if it be made by so many owners or occupiers of houses within the area concerned as that the aggregate water rates payable by them annually, at the rates specified in the Special Act, shall be not less than one-tenth of the initial cost of providing and laying the pipes. The owners and occupiers are further severally to agree to take the supply for at least three successive years.

12. With regard to (a), it is the view of the Sub-Committee that the degree of the pressure which the undertakers are to be under obligation to maintain should be determined in each case in the light of local conditions and local requirements. Undertakers, to which the section applies, fall broadly into three classes:— (a) those under obligation to maintain a constant supply under pressure throughout their limits; (b) those bound to maintain a constant supply under pressure only for those parts of their area which can be so supplied by means of the authorised reservoirs and works, and (c) those required to afford only an intermittent supply. The existing provision leaves to the Special Act to determine only the question whether the supply should or should not be laid on under pressure. If the Special Act requires that it should be so laid on, the degree of pressure is expected to conform to the general standard prescribed.

13. The first amendment to this section (Clause 1 of Appendix A) has therefore been framed to secure that it shall be left always to the Special Act to impose or to modify the obligation solely in relation to the circumstances of the district affected. The topography of the district, the sites at which service reservoirs can be located with reasonable economy, the expenses of pumping and general working costs, must be weighed up in each case in relation to the needs of the consumers in the various parts of the district and the effect upon the water charges. Any rigid general standard is liable to prove inequitable in districts where more than average difficulties are encountered.

14. With regard to (b), it will be seen that the second amendment recommended (Clause 1) is the substitution of one-eighth for one-tenth in the amount of the prescribed return on the undertakers' capital costs in laying their pipes. This amendment is not new. It has been approved by Parliament on several occasions in recent local legislation, and is generally accepted as satisfactory. The Sub-Committee quite realise that the amount prescribed in the section has reference only to the cost of the pipes and does not represent a figure which may be taken to cover the whole of the expense incurred by the undertakers in providing the supply. It serves simply as an index figure of the return which should equitably be guaranteed to the undertakers in laying out capital which may or may not ultimately prove to be remunerative.

15. Hitherto the capital cost on which the prescribed return is to be estimated has been solely that of laying the necessary mains. At a later stage* in this Report the Sub-Committee propose that the obligation to provide and maintain so much of the supply pipes (or "communication pipes") as is situate under the highway, and to defray the expenses involved in their provision and maintenance, should fall on the undertakers, in whom these pipes should in future vest. Consequently further amendments to section 35 are required to include these pipes with the mains in the capital cost concerned, and the form of the section has been verbally modified throughout to accord with the later recommendations.

16. It will be noticed that the word "dwelling-house" has been substituted for "house" in this section, and is used elsewhere in the clauses appended. No actual definition of "dwelling-house" is put forward, but the Sub-Committee in adopting the term feel that it should be made clear that it includes any part of a building occupied as a separate tenement.

17. It is found that in practice difficulties arise in making a requisition under the section to bind the undertakers. It may be that the aggregate amount of water rates payable by the owners

* See paragraphs 19-39 below.

or occupiers of houses requiring a supply is not sufficient to enable the requisite revenue to be secured. Again, although the aggregate amount of water rates payable would be sufficient if the owners or occupiers of all the houses in the particular area agreed to give the necessary guarantees, some of them may refuse to do so and accordingly a binding requisition cannot be made upon the undertakers by those desirous of obtaining a supply. In some Local Acts these difficulties have been met by provisions which not only enable the Local Authority of the district to make the requisition under the section, on behalf of the owners or occupiers, and to enter into the necessary agreement binding the undertakers, but also confer a general power on the Local Authority to make agreements with the undertakers for guaranteeing periodical payments to them in consideration of their extending their mains to any part of the district of the Local Authority in need of a supply.

18. The Sub-Committee regard the provisions referred to as a valuable corollary to section 35, and have accordingly recommended that clauses to this effect should be made of general application (Clauses 2 and 3). The clauses belong more properly to the review of the general law* than to the proposed revision of the Waterworks Clauses Acts, but it is convenient to deal with them at this stage in connection with section 35.

Supply Pipes.

19. Sections 48 to 53 of the Act of 1847 deal with the pipes to be laid by the consumers. After a full review of these clauses the Sub-Committee have come to the conclusion that they should be replaced by the new code appended to this Report (Appendix A, Clauses 4 to 13).

20. *The existing position.*—Under the sections as they stand the new consumer is given the right, when he has paid the portion of the water rate which is payable in advance, to open the ground between his premises and the mains of the undertakers and to lay the necessary supply pipe to communicate with those mains. He must first obtain the consent of the owners and occupiers of the ground affected, and must give the undertakers fourteen days' notice of his intention. Provision is made for the regulation of the bore, strength and material of the pipes laid by him. The connection with the mains of the undertakers is to be made under their superintendence, subject to provision for cases of dispute. The consumer is expressly authorised to break up so much of the pavement of any street as lies between the mains and his premises, and any sewer or drain therein, provided that he does as little damage as may be and compensates where damage does in fact result. Generally he

* Part IV below.

is subject to the same conditions and restrictions in his execution of the work as the undertakers themselves. The work completed, and the water rate in respect of his premises paid, he is entitled to receive a sufficient supply of water for his domestic purposes. The pipes so laid may be removed by the consumer who has laid them, or who has become the proprietor of them, after due notice to the undertakers and subject to compensation for damage sustained by them as the result of the removal.

21. *The proposed revision.*—The object of the suggestions contained in the appended code is primarily to divest the consumer of these rights so far as they relate to the execution of any work in or under the highway, and to transfer them exclusively to the undertakers. The Sub-Committee are convinced that the general policy which should be adopted is this:—

- (1) That the right to break up the highway should vest solely in the undertakers.
- (2) That the obligation to provide and maintain supply pipes in or under the highway should fall upon the undertakers.
- (3) That the expenses involved in their provision and maintenance should be defrayed by the undertakers themselves, and should not be directly recoverable from the consumer.

22. In advocating the general adoption of this principle, the Sub-Committee have been influenced by four important factors:—

Firstly, the general question of the breaking up of highways has recently come into prominence.

It is realised that improved methods of road construction, and the more durable materials used, have two effects:—

- (i) That any opening up of the road involves greater expense and difficulty, and is a longer process.
- (ii) That permanent damage to the road structure may result from it, especially if it is done frequently.

Both lead to one conclusion, that interference with highways should be confined as far as possible to statutory and other public authorities, to the exclusion of the private individual, and should take place as infrequently as is practicable. The need is intensified by the requirements of modern traffic and the enormous increase in the use of the roads, particularly in urban and thickly populated areas.

23. There has been since 1847 an appreciable trend towards vesting solely in the undertakers all works in or under the highway. In the supply of gas and electricity the principle has already been given general statutory application. In water supply the existing

practice varies considerably from district to district. In many districts the position laid down by the Act of 1847 still obtains in its original form. In some cases it has been partially modified by the provision that the initial laying of supply pipes should fall on the consumer, while their subsequent maintenance is put upon the undertakers. In a number of cases the whole of the work has already been transferred to the undertakers, to the exclusion of the consumer, and the principle now advocated has been put into operation.

24. Secondly, it is desirable for the undertakers to have the exclusive right of executing any works connected with their mains, and a provision to that effect has already become common in their Special Acts. The Act of 1847 provides only that the connection is to be made under the superintendence of their appointed officers.

25. Thirdly, it is generally true to say that the work is better executed, the materials used tend to be more durable, and the works and fittings to be more standardised, when it is taken in hand by the undertakers rather than the consumer. In practice this is generally acknowledged, but it has yet to receive recognition in the general law. Its importance, though sufficiently substantiated on more general grounds, is intensified by the heavier traffic user of the roads.

26. Fourthly, if these exclusive rights are to be vested solely in the undertakers, the question arises as to the allocation of costs. It has been suggested that the undertakers should be enabled to recover directly from the individual consumer all the expenses properly incurred by them in the execution of the work, including compensation for any damage resulting. The Sub-Committee feel that in this event the consumer would be placed in a rather worse position than he is in at present. He would lose the existing option of executing the works himself, but retain the liability to defray the costs. While the statutory obligation would be put on him to meet the resulting expense, the placing of the contract for the works would rest in other hands than his and he would have virtually no control over the manner of their execution. The one available remedy, to question the expenses in a court of law, is clearly not a readily workable safeguard.

27. Nor is it equitable that each consumer should be under the obligation to meet the expenses of repairing damage which is frequently due to the situation of his premises on a traffic frequented highway, to peculiarities of road construction over which he has no control, or generally to circumstances that are not of his creation and not attributable to his negligence. The position is aggravated in cases where the mains of the undertakers are set at one side of the street affected, while the consumers whose supply pipes traverse the whole width of the highway are under precisely the same

liability for maintenance as those whose pipes do not underly the highway at all. To regard the provision and maintenance of that part of the supply pipe which is under the highway as part of the general costs of furnishing a supply, and so to distribute the burden proportionately over the whole body of consumers, clearly offers the only fair and practicable solution.

28. The logical outcome of transferring the right to break up the highway exclusively to the undertakers is to transfer with it the liability to defray the attendant expense, and the appended clauses have been drafted with this in view. The necessity for some readily available means of providing for a corresponding increase in the charges levied is discussed at a later stage in this Report.*

29. The suggested revision of the existing sections will be seen to be mainly consequential upon this amendment of the general principle. The term "supply pipe" has been adopted throughout to obviate any ambiguity which might attach to the expression "communication pipe," and the definition given (clause 4) follows the Model Byelaws as to Water Fittings.

30. Thus, in the clause regulating the conditions to be fulfilled by the consumer who desires a domestic supply (clause 5) the existing position is retained, subject to the modifications necessary to give effect to the general principle advocated. The consumer is to pay or tender to the undertakers the portion of the water rate due to be paid in advance. This already applies. He is then, after obtaining all necessary consents, to open the ground and lay his supply pipe, but only so much of that pipe as is not in or under any street. Provision is made, as before, for the bore, strength and material of the pipe to conform to the standards approved by the undertakers, or in case of dispute to be settled by the court. He is still to afford the undertakers fourteen days' notice of his intention to lay the pipe, and this notice is to be deemed a request to them to carry out their part of the work.

31. The undertakers are to lay that part of the supply pipe which will be in or under the street, and to carry out the necessary connections with their main.

This work they are to execute at their own expense. At the consumer's expense the undertakers are to make the connection between the two parts of the supply pipe, that of the consumer and that provided by themselves under the highway, and this provision preserves the principle of the common clause already referred to which gives the undertakers an exclusive right to make necessary connections with their pipes. A penalty is attached to failure in carrying out their obligation (clause 6).

32. Two general provisions follow, which (a) vest in the undertakers so much of any supply pipe as is situated in or under a street

* Paragraphs 123-125 below.

and is, when the revision of the existing law takes effect, connected with their mains, and (b) put upon the undertakers the responsibility for the maintenance of these pipes (clauses 7 and 8). The latter duty is enforceable by a penalty, where necessary works of maintenance are not executed within twenty-one days from the service of a request to that effect from the consumer.

33. Throughout these clauses the word "street" is to be deemed to include not only private streets, but any land laid out as a street.

34. It should be emphasised that these proposals relate only to supply pipes provided for the purpose of furnishing a supply for domestic purposes, and do not affect the existing position with regard to cases of a metered supply. Nor are they intended to be in any way retrospective, but only to ensure that henceforward all works in or under the highway should be transferred to, and should vest in, the undertakers to the exclusion of the consumer where this practice has not already been adopted. The Sub-Committee have considered the desirability of providing for compensation to those consumers who have already had to meet the expense of providing a supply pipe which would under the new code be transferred to the undertakers. They cannot advocate any general provision for compensation on these lines. The effect would be to compel the undertakers to increase further the rate for a domestic supply, throwing the burden of compensation upon the consumers as a whole. Moreover those consumers who had in fact provided their supply pipe at their own cost would in future benefit by being relieved of the responsibility for its maintenance.

35. *Additional provisions.*—Further clauses follow which are taken substantially from familiar practice in Private Bill legislation. By the first (clause 9) the undertakers may, by agreement with the consumer, execute any work which the latter is entitled or required to do in connection with the supply pipe to his premises, and to recover the expenses from him. It will in future apply, if effect is given to the clauses preceding it, only to those works which do not involve interference with the highway. The second (clause 10) reproduces clause 12 of the Model Water Bill,* together with the addition usually found in the Special Acts. The effect is to allow the undertakers to require the provision of a separate supply pipe to each dwelling-house, and to refuse to countenance a common pipe. Where the consumer fails to comply, the undertakers may themselves execute the work and recover the costs. Similarly the third of these clauses (clause 11) contains the standard provision that the several owners or occupiers of separate premises, or parts of premises, supplied by a common pipe shall each be liable to contribute to any expenses incurred by the undertakers in the maintenance of that pipe. The proportions of their respective

* House of Lords Model Bills and Clauses ; part IV, Water Bill.

contributions are to be settled by the duly authorised officer of the undertakers. The clause has been adapted to apply only to that part of the common pipe which is not in or under any street.

36. The encouragement of the provision of stop-cocks on every supply pipe has been often urged as an alternative to the periodic breaking up of the highway in order to disconnect a supply in cases of default by the consumer. Their provision is understood to be already prevalent among the larger undertakings, and to be becoming increasingly common year by year. The arguments in favour of the practice are sufficiently established, but its effectiveness in meeting the ends which it is designed to meet is attended with certain difficulties. When the undertakers have in fact closed a stop-cock to disconnect the supply, their right to secure that it shall not be reopened without their consent is in some cases difficult legally to enforce. Further, where the stop-cock is situated within the consumer's premises, even access to it by the undertakers may not be available without some risk of liability for trespass.

37. To meet the former difficulty, the Sub-Committee recommend elsewhere in this Report* a provision which penalises any person who opens a stop-cock while he is not for the time being entitled to a supply or to the continuance of a supply. To meet the latter difficulty, they wish now to recommend (clause 12) that an express right of access should be secured to the undertakers wherever the stop-cock is situated within private premises. With this right secured, the duty should be put upon the undertakers in all cases to provide and maintain a stop-cock on every supply pipe. Its location should clearly be discretionary, but the consent of the consumer should be necessary before it can be affixed at any point within his premises. Provision is made to obviate the unreasonable withholding of this consent, and for reference in cases of dispute to a court of summary jurisdiction.

38. The last of the suggested clauses (clause 13) is based on section 53 of the Act of 1847, but relates only to that part of the supply pipe which it rests with the consumer to provide. The owner or occupier of any dwelling-house, or part of a dwelling-house, within the limits of supply, when he has fulfilled the conditions already prescribed, is entitled to call for and receive a sufficient domestic supply. A penalty is added for failure by the undertakers to carry out their obligation to furnish that supply, unless this is due to the failure of the demandant to comply with any of their byelaws for the time being in force or to shortage arising from unavoidable causes or accidents.

39. *Sections 44 to 47, Waterworks Clauses Act, 1847.*—It is convenient to refer at this stage of the Report to sections 44 to 47 of the Act of 1847, which deal with the duty of the undertaker to

* Paragraph 83 below.

lay the supply pipes to houses whose annual value does not exceed ten pounds, and the power to charge an annual rental in respect of them.

It is believed that these sections as they stand are seldom put into operation, and it has been suggested that there is no real ground for retaining them. The Sub-Committee still think it desirable to provide for a general power to the undertakers to make agreements with any person requiring a supply, as to the laying of that part of the supply pipe which is not under the highway and the payment of the whole or part of the costs involved, under whatever terms and conditions they think proper. The words "unless otherwise agreed" have therefore been inserted in clause 9. Subject to this, it is suggested that the sections referred to need not be retained.

Supplies for Domestic and Other Purposes.

40. It has been found convenient to review this subject under four main divisions :—

- (a) *Domestic Supplies*.—The supply covered by the definition of domestic purposes, where there is an obligation to supply and charges are based upon the annual value of the premises supplied.
- (b) *Quasi-domestic Supplies*.—Where there is an obligation to supply, but the undertakers have an option of charging by meter.
- (c) *Other Supplies*.—Where there is ordinarily no obligation to supply, and the terms, conditions and methods of payment are matters for agreement between the parties.
- (d) *Water Rates*.—Their levy and recovery.

(a) Domestic Supplies.

41. *Definition*.—An attempt has been made to move away from the old "definition by exclusion," as it is found in section 12 of the Waterworks Clauses Act, 1863, towards a more positive definition, covering a sufficient supply for ordinary domestic use (clause 14).

42. The Sub-Committee consider that the use of water for baths of ordinary capacity and water-closets should in future be generally recognised as an ordinary domestic purpose, and be covered by the rate for a domestic supply rather than made the subject of any additional charges. With improved sanitation and the demand for modern conveniences the provision of baths and water-closets is now very general, and the principal reason for excluding them from the domestic water rate no longer has the same force. Additional charges serve to retard progress in providing these conveniences, and necessarily involve additional expense in book-keeping and

collection. At the same time it has been thought advisable to retain a right to limit the capacity of baths to a reasonable figure, beyond which additional charges may still be desirable in the interests of the consumers as a whole. The actual limit must clearly be left to be determined in the light of the circumstances of the individual district. Where a bath of a capacity in excess of the prescribed limit is provided on the consumer's premises, the consumer should have the right to use for it water supplied for domestic purposes, and in any such case the undertakers should be given power to make such additional annual charge in respect of the bath as they think fit.

43. In the case of the Metropolitan Water Board and other of the larger undertakings, the step has already been taken and the rates for a domestic supply already cover water-closets and baths of ordinary capacity. For many years it has been the practice of Parliament to require that no extra payment should be demanded in respect of the first water-closet in a dwelling-house.

44. *Basis of Charge.*—Section 68 of the Act of 1847 provides that the rates for a supply of water for domestic purposes shall be payable according to the annual value of the premises supplied. The practice in local legislation varies, but the majority of undertakers have adopted a basis which is ascertainable from the valuation lists for the time being in force in the area supplied ; that is, either "rateable value" or "gross estimated rental" (or its equivalent, "gross value"). Older systems, working upon the rack-rent, or on annual value in any other sense than the two enumerated above, are being gradually superseded in modern practice. The principal argument in their favour, that they enabled anomalous and out-of-date valuations to be disregarded, is largely met by the advent of the new valuations under the Rating and Valuation Act, 1925.

45. Both for convenience and for fairness of assessment, it is felt that any basis for general adoption should be one ascertainable from the current valuation lists. Rateable value is understood to be the basis favoured in practice by the majority of the existing undertakings, and would therefore involve least adjustment locally if it were made of general application. Forming, as it does, the basis of the general rate levied by the local authorities, it is to that extent preferable at least in cases where the local authorities are themselves the water undertakers. Further, gross estimated rental (or gross value) is not retained for all purposes under the Rating and Valuation Act, 1925, and there are consequent difficulties in its general adoption.

46. However, to maintain the present scope of rateable value as a basis, it is necessary to take into account the provisions of the Local Government Act of this year. When those provisions are in operation, the rateable value of industrial hereditaments will be

reduced by 75 per cent., while that of agricultural land and buildings will entirely disappear. To give effect to the basis which the Sub-Committee favours and at the same time to secure the uniform application of that basis to every consumer, whether he be the occupier of derated premises or not, it will be necessary in future to substitute net annual value for rateable value, and so to maintain the status quo. For those cases in which the required value will not appear in the valuation lists at all,—and in the levy of rates for a domestic supply of water the difficulty will seldom arise,—it is necessary to provide for the settlement of a basis of charge in case of dispute by the court, on the lines of the procedure already laid down by section 68 of the Act of 1847 and retained in the appended clauses.

47. The clause put forward* by the Sub-Committee accordingly includes provisions to this effect, modelled upon those already contained in the new Local Government Act.

48. *Supply by meter for domestic purposes.*—The suggestion is from time to time put forward that the domestic supply should in all cases be by meter. The growing need for economy in the use of water is urged, and the need for conserving existing sources of supply. The Sub-Committee suggest that it is not necessary to consider this proposal seriously at present. They are not aware of any general demand for such an alteration, either from the undertakers or from the public; nor is there, in their opinion, occasion for general alarm as to the adequacy of water supplies, although there are districts in which the question of future sources demands serious consideration. Quite apart from the expenses involved in a general installation of the meter system, it is clearly undesirable, in the interests of public health, to place undue restrictions upon, or to discourage the use of, sufficient water for domestic requirements. There are other directions in which remediable waste can be prevented, and these are discussed at a later stage in this Report.

49. The undertakers should, however, have a general power to supply by meter for domestic purposes by agreement with the consumer and on agreed terms and conditions, and an enabling clause to that effect has been included (clause 15).

(b) *Quasi-domestic Supplies.*

50. The Act of 1847 established the principle of the compulsory supply for domestic purposes at prescribed rates, but it left open the question of what was or was not a domestic purpose. It remained for the undertakers, when they went to Parliament, to stipulate that supplies for certain specified purposes were not to rank as supplies for domestic purposes. A number of these exclusions,

* See paragraph 58 below, and clause 18 of Appendix A.

becoming common-form, were consolidated in section 12 of the Act of 1863. Since that Act the excluded supplies have multiplied rather than diminished. Sixty years of Special Act legislation have left a general lack of uniformity among the various undertakings. A supply included in domestic purposes in one area, may be metered or the subject of an additional charge in another. The position calls for a consolidating clause to give general effect to the scope of these quasi-domestic supplies as experience has justified it. Some attempt towards consolidation has been made in clause 16 of the House of Lords Model Water Bill. It has been frequently adopted and is allowed by modern Parliamentary practice whenever it is sought. But in the more recent Acts it has been elaborated and extended, and any adequate general provision must have regard to those additions which have been allowed by Parliament but do not appear in the Model Clause.

51. The clause appended (clause 16) is based on the Special Act precedents and represents the scope which should, in the Sub-Committee's view, be given to those supplies which the undertakers are under obligation to furnish, but for which they have the option of charging by meter. The two objects of the clause are to secure a more equitable distribution of the burden of charge among the consumers, and to restrict excessive consumption and waste in conditions where experience has shown these prevail if an unlimited supply is given under the domestic purposes rate.

52. In accordance with the established practice of Parliament provision is made for a maximum charge for metered supplies under this heading. It is equally desirable, from the undertakers' point of view, that provision should be made for a statutory minimum charge to be normally levied in these cases. Recent Special Acts favour generally a minimum quarterly charge (exclusive of meter rents) of one-fourth of the amount which would be annually payable for the domestic supply of premises of the same rateable value, and this figure the Sub-Committee have adopted. They consider, however, that it should be within the discretion of the undertakers to waive the prescribed minimum in certain cases where they consider it desirable, and the provision has therefore been made permissive rather than mandatory. Net annual value has been substituted for rateable value for the reasons already explained.

53. A sub-clause is included, which expressly puts upon the undertakers the duty of supplying water, with the option of charging by meter, to purely manufacturing and trade premises for the sanitary use of the employees. Its object is to make clear an obligation which may under the present system be open to doubt in certain cases, but which is obviously commendable from a public health point of view. The scope of "sanitary purposes" is defined.

54. The fourth sub-clause is already familiar, and is designed to meet the increasing use of domestic refrigerators which require

large quantities of water for their daily operation and which clearly cannot, in fairness to the consumers as a whole, be regarded as falling within the definition of ordinary domestic purposes. It enables the undertakers to require that water for refrigeration purposes be taken by meter, and provides that in cases where the consumer is otherwise taking only a domestic supply the minimum chargeable for the water so metered shall not exceed ten shillings a quarter.

(c) *Other Supplies.*

55. The general power to supply water for other than domestic purposes, where there is no obligation to supply and where terms and conditions are left to agreement, is dealt with by the clause which follows (clause 17). This has been modelled upon clause 15 of the House of Lords Model Water Bill, which is the form generally adopted in the Special Acts. The provision that "water may be supplied by meter for domestic or other purposes" has been omitted. The precise effect of it is doubtful, and in view of the new provisions which the Sub-Committee suggest (including the clause enabling a supply by meter for domestic purposes to be given, by agreement with the consumer) it is felt that it may now be deleted without affecting the general position. The protection for the undertaker in cases of frost, unusual drought, or unavoidable cause or accident, contained in section 13 of the Act of 1863, has been incorporated.

56. A sub-clause has been added, expressly including in the scope of a supply "for other than domestic purposes" water used for any trade, manufacture or business, for fountains or ornamental purposes, or for watering gardens. The object of this addition is to avoid any ambiguity which might otherwise attach to the definition of a domestic supply already given.

(d) *Water Rates.*

57. Sections 68 to 74 of the Act of 1847 and section 21 of that of 1863 deal with the levy and recovery of water rates. After considering these sections in the light of modern practice, the Sub-Committee wish to put forward in their place the consolidated code appended (clauses 18 to 27).

58. *Basis of Charge.*—The basis of the charge for domestic supplies has already been discussed, and the first of the new clauses (clause 18) embodies the Sub-Committee's suggestions. Its general form is framed on the model of clause 10 of the Model Water Bill, with the alterations already discussed.

59. A further sub-clause has been added to cover the case of two or more premises which are in one occupation and connected by a private means of communication which virtually makes them

a single tenement for water rate purposes. In these cases it is only fair that the undertakers should be able to levy their rate upon the aggregate net annual value of the several premises. The provision is taken from recent local legislation.

60. *Water used in Garages, etc.*—It is already common practice for the undertakers to be empowered to levy a prescribed additional charge where water supplied for domestic purposes is used, by means of a hosepipe or similar apparatus, for washing horses, carriages or motor vehicles, or for other purposes in premises where these are kept for private use. Clearly the general argument, on public health grounds, in favour of an inclusive rate for domestic supplies irrespective of the quantity consumed, does not properly apply to water used for these purposes, and a provision on these lines (clause 19) is in the interest both of the undertakers and of the general consumer.

61. The clause which follows (clause 20) has already appeared in several of the more recent Special Acts. It relates to the case where a consumer takes both a supply for domestic purposes and a metered supply for trade or other purposes, and who then uses water by means of a hosepipe in the manner covered by the preceding clause. In such cases the undertakers, in lieu of distinguishing between the three uses—the domestic supply, the trade supply and the specially charged hose-pipe—may require the last to be combined with the metered supply. That is, they may require the water so used by means of the hose-pipe to be taken by meter and be paid for accordingly.

62. *Liability to pay Water Rates.*—Substantially the existing position under the Act of 1847 has been maintained. The minor amendments which have been made are in the main self-explanatory.

63. Thus the rates are generally recoverable from the persons requiring, receiving or using the supply (clause 21). This accords with section 68 of the existing Act. In cases of supply to separate occupiers by a common pipe, section 69 has been retained subject to the substitution of “dwelling-houses” for “houses,” to accord more clearly with the clauses on domestic and metered supplies (clause 22).

The provision that rates shall be paid quarterly, at present in section 70, has been altered to accord with the more usual divisions of the financial year in England and Wales (clause 23). This follows modern practice. Precedents already exist in local legislation for leaving to the undertakers the option of levying the rates upon a half-yearly basis instead, and with this principle the Sub-Committee are in agreement, subject to the proviso which makes the rates so levied recoverable only after two months have elapsed from the dates on which they fall due. A new clause (clause 24) has been adopted from the Special Acts, which authorises a discount not exceeding five per cent. for prompt payment of the

domestic water rate. The clause is purely permissive, but if it is used, the discount must be granted uniformly to all consumers and notice of it is to be endorsed on the demand notes.

64. Again, the liability of consumers who give notice of their intention to discontinue the use of the water supplied, or who remove from their dwelling between two quarterly days of payment, has been retained as it stands in section 71 (clause 25). Where the undertakers elect to levy the water rates upon a half-yearly basis, certain consequential amendments to this clause may presumably be required. A further provision has been added, regulating the validity of such notices of discontinuance. The addition is already familiar, and appears in clause 13 of the Model Water Bill.

65. Similarly sections 72 and 73, which deal with the liability of the owners, rather than the occupiers, in houses whose annual value does not exceed ten pounds, have been substantially retained in the new clause relating to the rates payable by owners of small houses (clause 26). "Net annual value" has been substituted for "annual value", to accord with the basis recommended for the domestic supply rates. The new prescribed figure of fifteen pounds is thought to accord more with modern conditions.

66. A further provision has been included by which, in the case of dwelling-houses let to tenants holding on less than a quarterly tenancy, the owner may be required to pay the water rates in lieu of the occupier. They may, of course, be recovered by him from the occupier. The provision represents clause 11 of the Model Water Bill. It has obvious advantages from the undertaker's point of view, in the simplification of book-keeping and economy in collection, without any compensating disadvantage to the consumer.

67. *Recovery of rates.*—The method of recovery is dealt with by section 74 of the Act of 1847 and section 21 of that of 1863. The former section enables the undertaker to cut off the supply for the purpose of recovering his rate, and where the rate due does not exceed twenty pounds, to recover it with the costs of recovery and of cutting off the supply in the same way as damages are ordinarily recoverable by him—*i.e.*, damages for the recovery of which no special provision is made. If the sum due amounts to or exceeds twenty pounds he may recover with costs in any court of competent jurisdiction.

68. This has been retained (clause 27), but a restrictive provision has been added to prohibit the disconnection of supply where it is the owner, and not the occupier, who is liable for payment of the rate. It represents sections 4 and 5 of the Water Companies (Regulation of Powers) Act, 1887, which was passed for the express purpose of limiting the power of water companies to cut off the

tenant's supply where the rate is due from the landlord. The Sub-Committee feel that other statutory undertakers should be put on the same footing as the companies in this respect, and the restriction be made uniform.

69. Finally, the last sub-clause represents the existing section 21 of the Act of 1863, by which the undertakers are given a supplementary power of recovery, with costs, in any court of competent jurisdiction.

Waste, Misuse, Undue Consumption and Contamination.

70. The prevention of the waste and misuse of water presents so serious a problem that the general metering of the domestic supply is from time to time put forward as the only ultimate solution. The position has not yet arisen when any drastic remedy on these lines, which would run counter to all the arguments of the public health, need be seriously considered. The problem is acute, but it is to a large extent remediable. The first necessity is to put into general operation a comprehensive set of protective clauses designed to meet the more normal difficulties which arise in practice.

71. Broadly, these clauses are already in existence. The deficiency of the Waterworks Clauses Acts has forced the undertakers severally to supplement them by special legislation. Taken as a whole, the accumulation of the more commonly enacted clauses offers a very comprehensive code, which is the outcome of difficulties actually experienced. But it has yet to be enforced as a whole, and its value is diminished by the fact that it is only partially operative—the degree varying unreasonably from district to district—in the case of each individual undertaking. The main task of the Sub-Committee has therefore been to revise and augment the existing Clauses Acts in the light of all that was best in local legislation, and to put forward a code which would give each undertaker the advantage of the collective experience of the others.

72. The fouling of the undertakers' water is closely allied with the question of its waste and misuse, and has been treated accordingly under the one heading. The exact scope of the new code is summarised below. Wherever it goes beyond the present general law, it substantially represents measures which are not new and have for the most part been commonly approved by Parliament in the past.

73. *Bye-laws for protection of water (clause 28).*—This clause—based upon the House of Lords Model Water Bill—empowers the undertakers to make byelaws for the prevention of the waste, undue consumption, misuse or contamination of their water. They may, inter alia, regulate the materials and other details of the fittings to be used. The exercise of the power is subject to the usual

safeguards prescribed by the Public Health Act, 1875. The form of the clause has been amplified to render it applicable both to local authorities and to water companies.

74. *Power to supply fittings (clause 29).*—The undertakers are given a general power, on request from the consumer, to provide and repair or alter (but not to manufacture) any fittings which are required or permitted by their byelaws or regulations, at reasonable charges. The normal provisos where the undertakers are a local authority have been included in the clause, which is taken from the Model Water Bill.

75. Two further provisions have been adopted in this connection. The first (clause 30) gives the undertaker a general right to sell meters and any fittings connected therewith on such terms and conditions as he thinks fit. This also appears in the Model Bill. The second (clause 31) is substantially section 14 of the Act of 1863. It empowers the undertakers, where water is supplied by measure, to let for hire any meter or similar instrument, and any pipes, apparatus and fittings for the reception or storage of water, on terms to be agreed with the consumer. The existing protection of such fittings, in cases of legal process against the consumer, has been made the subject of an additional provision (clause 32) which extends it to all fittings let for hire under the Act.

76. *Penalty for injuring fittings, etc. (clause 33).*—A penalty is attached to the injury of, or tampering with, meters and other fittings belonging to the undertakers, and for the fraudulent abstraction or use of their water. In such cases the undertakers are given a right of entry to execute the necessary repairs, and their expenses are recoverable from the offender. The existence of artificial means for such injury or misuse is to be *prima-facie* evidence against the consumer, subject to certain conditions. The clause is adopted from the Model Water Bill.

77. *Provision of cisterns (clause 34).* This embodies the powers already included in sections 54 and 56 of the Act of 1847. In cases where the Special Act provides that the supply need not be constantly laid on under pressure, the undertakers may call upon the consumer to provide proper cisterns, with the necessary ball and stop-cock fittings. In cases of default the supply may be disconnected. Further, the undertakers may execute necessary repairs, and recover the expenses from the consumer.

78. Section 55 of the Act of 1847, which imposes a penalty on the consumer who suffers the cistern and allied apparatus to be out of repair, with consequent waste, has been omitted. The only reason for its omission is that the necessary power is incorporated in the wider provisions of section 17 of the Act of 1863, which the Sub-Committee have adopted in a later clause.*

* Paragraph 86 below, and clause 42 of Appendix A.

79. *Meters for detection of waste (clause 35).*—This empowers the undertakers to fix and maintain meters and similar apparatus on the service pipes and mains, and stop-cocks on the supply pipes, for the purpose of preventing or detecting waste. It should be noticed that the general provision of stop-cocks is also to be recommended from other points of view than that expressed in the clause, in that it offers in many cases an alternative to breaking up the highway to disconnect the supply. The proviso for the protection of the Postmaster-General follows current practice.

80. *The register of meters (clause 36).*—Where water is supplied by measure, it is customary to provide that the register of the meter or other instrument used shall be prima-facie evidence of the quantity consumed. Where the consumer and the undertaker cannot agree, their difference may be settled by reference to a court of summary jurisdiction. A similar provision already applies generally to local authorities not working under Special Act powers, by virtue of section 59 of the Public Health Act, 1875.

81. The common-form clause goes on to provide that, where a meter is proved to register erroneously, such erroneous registration shall be deemed to have commenced during the last preceding quarter, unless proved to have arisen in the current quarter. Provision is made for recovery of allowances or surcharges resulting from the error. These provisions have been included.

82. *Inspection or removal of meters, etc. (clause 37).*—The general power of the undertakers' officers, under section 15 of the Act of 1863, to enter premises supplied by measure and inspect the meters and other fittings used, or to remove any meter or fitting which is the property of the undertakers, has been retained with verbal amendments, which are self-explanatory.

83. *Penalties for interference with fittings, etc.*—The injury or opening of valves or other fittings of the undertakers is dealt with by section 60 of the Act of 1847. The section is inadequate in its scope. It is frequently supplemented by a provision which penalises the consumer who closes or in any way tampers with valves, cocks or other works or apparatus of the undertakers, so as to interfere with the supply. In addition to the penalty the undertakers may generally recover the amount of any damage sustained. Further, a penalty is now commonly imposed upon any owner or occupier who, not being at the time entitled to a supply or to the continuance of a supply, turns on any valve, cock or other fitting without the authority of the undertakers. These two clauses have been adopted (clause 38). It is suggested that, with these and the other clauses of the new code in force, the existing section 60 might be allowed to lapse.

84. Of the two clauses which follow, the first (clause 39) imposes a penalty for the illegal extension or alteration of pipes. It

represents section 19 of the Act of 1863, with certain verbal alterations to conform to the terminology of the Model Byelaws as to Water Fittings. The second (clause 40) requires the consumer to give due notice in writing to the undertakers of his intention to connect or disconnect any meter. The work is to be done under their superintendence, at the consumer's cost. It appears in the Model Water Bill.

85. *Penalties for misuse of water (clause 41).*—This reproduces the substance of sections 58 and 59 of the Act of 1847, and sections 18 and 20 of that of 1863. It imposes a penalty upon any person who (a) allows others to take the water supplied to him, (save in cases of fire, or where they are themselves supplied by the undertakers but their pipes are, without default on their part, out of repair), or (b) takes or uses water without agreement or a supply in the ordinary way, or (c) uses water contrary to the agreement under which it is supplied, e.g. who uses a domestic supply for non-domestic purposes.

86. *Waste due to non-repair of pipes.*—The provisions of section 17 of the 1863 Act have been retained (clause 42). A penalty is imposed where pipes and other apparatus are allowed to be out of repair or to be misused, with a consequent likelihood of waste or detriment to the supply.

87. With the same object in view the Sub-Committee are putting forward two additional clauses. The first (clause 43) relates to that part of the supply-pipe which the undertakers are not under obligation to maintain.

Where any defect in it appears to involve waste of water or injury to person or property, or the risk of such waste or injury, they may themselves execute the necessary repairs and, where actual defect in or injury to the pipe is ascertained, may recover the costs. Except in cases of emergency, the power is not to be exercised without due notice being given. The second (clause 44) gives them the general power to repair fittings for whose maintenance they are not responsible, on the failure of the consumer to do so after twenty-four hours' notice in writing. Their expenses are to be recoverable. The clause is virtually an extension of the power already conferred by the Act of 1847 in relation to cisterns and allied apparatus in cases where the supply is not constantly laid on under pressure. It is felt that the power should cover all those fittings from whose non-repair waste may ensue. The recovery of penalties under clause 42 may be too dilatory a remedy for the immediate prevention of waste.

88. *Power to cut off supply (clause 45).*—The general power to disconnect the supply where the provisions of the Act are contravened, or where the provisions relating to the protection of water are not conformed to, is already included in the Act of 1863, (section 16). No alteration is suggested, and the section is appended as it stands.

89. *Power of entry to detect waste (clause 46).*—The substance of section 57 of the Act of 1847 is retained in the clause enabling any authorised officer of the undertakers to enter the consumer's premises for the detection of the waste or misuse of water. The hours within which the power may be exercised have been extended from 4 p.m. to 5 p.m.

90. *Fouling of water.*—Sections 61 to 67 of the Act of 1847 relate to the fouling of the water of the undertakers. The Sub-Committee are agreed that no alteration of these provisions is required, beyond the modifications of sections 61 and 62 already recommended in their Report on Underground Water.

91. They wish, however, to draw attention to the further recommendations put forward in that Report, in connection with the contamination of underground water. They there emphasised the desirability of conferring upon all statutory undertakers certain powers for the protection of their supplies, which represented in substance the powers ordinarily allowed by Parliament when sought in local legislation. The powers alluded to were these—

- (1) For the purpose of protecting any of their waters and waterworks against pollution, nuisance, encroachment or injury, to purchase, take on lease or otherwise acquire any lands, easements or rights, by agreement, and to hold such lands and any other lands which they may have acquired for the purposes of their water undertakings so long as they shall deem it necessary or expedient for those purposes.
- (2) In and upon the lands so acquired, to construct and lay down drains, sewers, watercourses, catchpits and other works and conveniences necessary or proper for preventing the water which they are empowered to take from being polluted ; and for these purposes to carry any such drain, sewer or watercourse under, across or along any street or road, subject and according to the provisions of the Waterworks Clauses Act, 1847, with respect to the breaking up of streets for the purpose of laying pipes.
- (3) To acquire compulsorily any land required for the protection of their water supplies, and to obtain a Provisional Order for the purpose from the Minister of Health, whatever their status.
- (4) To make and carry into effect agreements with the owners, lessees or occupiers of any lands with reference to the execution by the undertakers or such owners, lessees or occupiers of such works as may be necessary for the purpose of draining such lands, or any of them, or for more effectually collecting and conveying and preserving the purity of the waters which they are for the time being authorised to take.

- (5) To make byelaws for securing the purity of the waters which they are authorised to take for the purposes of any of their waterworks ; and by such byelaws to prescribe the construction maintenance and use of proper drains, sewers, works and conveniences, and to make provision for the prevention of nuisances and for the prevention or regulation of any act or thing tending to pollution of the water; and to prescribe by the byelaws the area within which they should be in force.

92. These recommendations the Sub-Committee wish strongly to repeat. They are now of opinion, however, that the simplification of procedure in obtaining compulsory powers, mentioned in the third suggestion above, should be carried further to accord with the recommendations put forward at a later stage in this Report.*

Financial Provisions Affecting Companies.

93. When a water undertaking is in the hands of a statutory company, trading for profit, the amount of the profits which the undertakers may receive and the allocation of moneys in excess of that amount are regulated normally by sections 75 to 83 of the Waterworks Clauses Act, 1847, and section 122 of the Companies Clauses Act, 1845. The effect of these provisions is as follows:—

- (1) The profits divisible among the undertakers in any one year are not to exceed the rate prescribed in the Special Act; or, if no rate be prescribed, they are not to exceed ten per centum of the paid up capital of the undertaking, unless a larger dividend is at any time necessary to make up the deficiency of that of any previous year.
- (2) If in any year the clear profits of the undertaking amount to a larger sum than is sufficient, after making up the deficiency of any previous year's dividend, to make a dividend at the prescribed rate, the excess is to be devoted to the formation of a reserved fund. The limit to this fund is to be prescribed in the Special Act, or if none is there prescribed, a limit of one-tenth of the nominal capital is imposed. The fund is to be available for the equalisation of dividends, and to meet any extraordinary claim or demand which may arise against the undertakers and which is certified by Justices. When the fund amounts to the prescribed sum, the interest and dividends thereon are no longer to be invested, but are to be applied to any of the general purposes of the undertaking to which the profits are applicable.

* Paragraphs 129–136 below.

- (3) On the petition of any two water ratepayers within the limits of supply, the Court of Quarter Sessions may direct an enquiry into the financial position of the undertakers. If the Court are satisfied that the profits for the preceding year have exceeded the prescribed rate, and if the whole of the reserved fund is invested in the manner prescribed and the full dividends authorised have been paid, the undertakers are to make such reduction in the water rates as the Court consider proper. It is provided that the rates, so reduced, shall be sufficient to ensure a profit as near as possible to that authorised by the Act.

The Act goes on to regulate the annual accounts to be made up by the undertakers.

- (4) In addition to these provisions, where section 122 of the Companies Clauses Act, 1845, is in operation, the directors of the company may, before apportioning the profits to be divided among the shareholders, set aside such sum as they think proper to meet contingencies, or for enlarging, repairing or improving the works connected with the undertaking.

94. These provisions are not always incorporated as they stand in the more recent Special Acts, and there is a growing tendency towards a new common-form modification of them which indicates the direction which any necessary amendment should take. Their effect has therefore been examined in the light of the variants which are being allowed by Parliament, and the Sub-Committee submit the following recommendations:—

Reserve and Contingency Funds (clause 47).

95. *Maintenance of the distinction.*—The Sub-Committee have considered the advisability of merging the two funds which the undertakers may be authorised to maintain, under the Act of 1847 and the Companies Clauses Act respectively, into a single fund applicable to all or any of the purposes to which either can at present be applied. They wish, however, to retain the broad principle of the distinction as it stands. It will be seen that the effect of the appended clause is to enable the undertakers to administer the two funds in all essentials as a single whole, and to free them from the anomalies which at present result from the closely defined restrictions upon their formation and use of the one and their practically complete discretion with the other. Against a complete and recognised unity there is always the valid objection that the shareholder feels a diminished sense of security, if the object of safeguarding his dividend appears to be merged in a much wider aggregate of purposes to which the fund may be applied. The separation should, therefore, nominally, and for purposes of accounting, be maintained. The terms “reserve fund” and “contingency fund” are adopted to make clear the distinction.

96. *Formation of the funds.*—Under section 76 of the Act of 1847 no power is given to the undertakers to allocate any portion of their profits to the formation of the reserve fund, unless the clear profits exceed the amount required to make up deficiencies in the previous dividends and to make a current dividend at the prescribed rate. This is an undesirable limitation. The undertakers should have a discretionary power to establish a reserve fund where they deem it necessary or desirable, subject always to proper regulations as to the mode of its formation and the limit of its amount. At the same time the contingency fund permitted by the Companies Clauses Acts should be brought definitely within the scope of those regulations, and be placed on an equal footing with the reserve fund in its application to water undertakers. The more recent precedents have therefore been adopted of a permissive clause, empowering the undertakers, in the formation of either fund, to set apart in any year from the clear profits of the undertaking such sum as they may determine, subject always to the prescribed limits. The securities in which these moneys may be invested are more clearly defined than under the existing section, and conform to the usual provision in such cases. The purposes of the funds remain unaltered, save that it has been made clear that the contingency fund extends to the renewal of works as well as to their repair, enlargement or improvement.

97. *Limits.*—In assessing the limits to be imposed on the amount at any time standing to the credit of these funds, the tendency of recent legislation has been followed. The funds are treated collectively, and a limit set to their aggregate amount. Within that limit the apportionment between the funds is left to the discretion of the undertakers. Thus they virtually form a single fund in their application, and so long as the general limits are observed a greater or less proportion of the amount can be allocated at will to the various purposes for which the funds are formed. The aggregate limit has been fixed, in accord with the more usual formula, at one-tenth of the capital for the time being expended by the undertakers for the purposes of the undertaking.

98. The funds can be formed at any time at the discretion of the undertaker. It is therefore necessary to prescribe a limit to the amount which may be allocated to them in any one year. Again the current formula is adopted, The limit is set at one per centum of the same total, and applies both to the initial formation of the funds and to their restoration. This yearly limit has an important bearing on the reduction of charges, which is discussed below.

Limit to carry forward (clause 48).

99. To complete the provisions relating to the profits of the undertakers, it is necessary to include the additional clause which now usually supplements the provision for reserve and contingency

funds in the Special Acts. This prohibits the undertakers from carrying forward at the end of any year to the credit of their net revenue account any sum exceeding the total of the following amounts:—

- (a) the sum required for payment of the authorised dividends and interest for the year,
- (b) the amount which may lawfully be distributed in dividends on the preference and ordinary capital for the following year, and
- (c) the amount due for the following year as interest on mortgages or debenture stock.

100. It is estimated that the combined effect of this and the preceding clauses will be to ensure a more equitable adjustment of the water charges to the yearly profits of the undertaking. The clear profits cannot lawfully exceed the amounts required (a) for payment of the authorised dividends and making up the deficiency of previous dividends, (b) for the maximum yearly allocation to the reserve and contingency funds, and (c) for the restricted carry-forward referred to in the preceding paragraph. It is for the undertakers to budget in such a way that their profits will not exceed these limits, and where excessive profits are likely to be earned they will have no option but to provide betimes for a reduction of their charges.

101. The importance of the change is that this reduction is independent of whether the reserve and contingency funds are or are not full; whereas under the existing provisions a reduction is only necessitated where the reserve fund stands at the prescribed maximum. Where, in any year, the profits are large but the reserve fund falls considerably short of the maximum, there is nothing at present to ensure that the benefit of a successful year's working is passed on to the consumer. The new restriction on the amount to be devoted to the funds in any one year secures a closer interaction between the annual profits and the annual charges.

Revision of rates (clause 49).

102. In view of the joint effect of the previous clauses, it is not anticipated that the provision which follows will often be required. It is desirable, however, in any general revision of the Clauses Acts, to modernise and make more practicable a precautionary measure which already appears in them.

103. The existing right of any two water ratepayers to petition Quarter Sessions, to secure a reduction in the rates of charge, has already been described. Practically, the right has been of little use. If the effect of the section is to be maintained, the precedent already to hand for a simpler and improved machinery should be generally substituted.

104. The application for reduction of charges should come from a local authority having jurisdiction within the limits of supply. It should be made directly to the Minister of Health. If the Minister is satisfied that (a) the divisible profits for the preceding year have exceeded the amount required for payment of the authorised dividends on the share capital, and (b) the reserve and contingency funds stand at the prescribed limits, he should be empowered to make, by Order, such reduction in the rates leviable as he deems reasonable. The rates, so reduced, should remain sufficient to enable the company, after all proper expenses and allocations to the two funds have been met, to continue to make the maximum dividends authorised. The Order should be open to amendment at the end of five years, on the application of either the local authority or the company.

105. It should be emphasised that this clause is to be clearly distinguished from the general question of the revision of charges. It simply provides for those rare cases where the clear profits exceed the amount divisible among the shareholders, and where the reserve and contingency funds are full. Normally the necessary reduction should in future take place automatically, under the clauses previously discussed. Assuming that the additional safeguard should be retained, it should clearly be made a readily workable and expeditious remedy. This the new clause attempts to do.

Lands.

106. The subject matter of the recommendations which follow relates more properly to a general review of the Lands Clauses Acts than to the more limited scope of water legislation. It has naturally been impossible, in examining the position and powers of the water undertaker, to exclude from discussion certain provisions which govern the acquisition and tenure of lands, or of rights and easements in lands. The Sub-Committee are not aware whether any revision of the Lands Clauses Acts is to be expected in the near future. If such a revision is contemplated, it may still be of value to outline in this Report the provisions which are to be recommended from the point of view of water supply and the requirements of the water undertaker. If, on the other hand, there is no immediate prospect of a revision, they feel that the new legislation which they have already advocated should extend to give effect to these clauses now, pending their possible consolidation at a later stage in a revised Lands Clauses Act.

107. The substance of these clauses is not new and has been well tested in local practice. Some of them are already embodied in the Model Bills and Clauses of the House of Lords. The time has come when they should be enacted in some general form for simple incorporation by the undertakers in their Special Acts or Orders, without the necessity for express re-enactment in each individual case.

Their effect is summarised below, and their detailed provisions are appended (clauses 50 to 56 of Appendix A).

108. *Acquisition of easements only, in certain cases (clause 50).*—Where any authorised works are intended to be constructed underground, the undertakers are empowered, in lieu of acquiring lands for the purposes of those works, to acquire only the necessary easements in those lands. They may give notice to treat in respect of those easements and the provisions of the Lands Clauses Acts are to apply as fully as to lands within the meaning of those Acts. Lands in respect of which easements only are so acquired are not to be fenced off or severed by the undertakers, but their owners and occupiers are to retain all their existing rights to the use and cultivation of them, subject only to the easements themselves.

109. *Granting of easements by persons under disability (clause 51).*—Under this provision persons empowered by the Lands Clauses Acts to sell, convey or release lands are enabled to grant any easement, right or privilege (other than rights in water in which others than the grantor have an interest) in connection with such lands. Such grants or rights are to be governed by the provisions of the Lands Clauses Acts with regard to lands and rent charges, so far as these are applicable.

110. *Retention and disposal of lands (clause 52).*—This affords the undertakers a greater margin of discretion in retaining or disposing of the lands vested in them. Notwithstanding anything in the Lands Clauses Act or any other Act to the contrary, they may retain and use any lands belonging to them for such time as they deem desirable for the purposes of the undertaking, or alternatively they may dispose of them in whatever manner and on whatever terms they think fit. In their disposal they may reserve to themselves any water rights or easements, or make the conveyance subject to any conditions regulating the use of water, the exercise of noxious trades or the deposit or discharge of impurities, as the case may be.

111. *Compulsory acquisition of parts only of lands or buildings (clause 53).*—It may frequently happen that the acquisition of some part only of the properties authorised to be acquired will suffice for the purposes of the undertaking. In these cases it is only equitable that the undertakers should not be under an obligation to acquire the whole, unless it can be shewn that the proposed division of the property will prejudice the interests of the owner.

112. The details of this provision may be seen from the appended clause. It makes possible such partial acquisitions, unless the owner can satisfy the tribunal to whom the question of disputed compensation is referred that the severance of part only of his property will be damaging to him. It is for the tribunal to determine whether or not that severance is justified, and if it is not

whether any greater part of the property may justly be severed from the whole. The tribunal referred to is, of course, the arbitrator or other tribunal to whom the question is referred under the Lands Clauses Acts or, as the case may require, the Acquisition of Land (Assessment of Compensation) Act, 1919.

113. *Compensation in cases of recently acquired interests (clause 54).*—In the assessment of compensation for the compulsory acquisition of lands no award is to be made in respect of improvements, alterations or buildings made, or interests in the land created, after a specified date, if the tribunal are of the opinion that these were made or created with the object of securing or increasing compensation, and not from any reasonable necessity. The specified date is necessarily left to the Special Act to prescribe, but the more usual practice of adopting the date of the first advertisement of notice of the Bill is to be recommended.

114. *Extinction of private rights of way (clause 55).*—Where lands are acquired compulsorily by the undertakers, all private rights of way over those lands are, under this provision, automatically extinguished, subject to full compensation to interested parties. This compensation is to be settled in the manner provided by the Lands Clauses Acts, with respect to the acquisition of lands otherwise than by agreement, and is, of course, payable by the undertakers.

115. *Purchase of additional lands by agreement (clause 56).*—The undertakers are enabled to purchase, take on lease or otherwise acquire by agreement, and to hold for the purposes of their undertaking, further lands in addition to those specifically authorised in their Special Acts. A limit of quantity is usually prescribed, to be exceeded only with the consent of the Minister of Health.

116. On these lands they may execute any of the works or exercise any of the powers authorised by section 12 of the Waterworks Clauses Act, 1847, but it is made clear that this does not extend to the construction of wells or works for the taking or intercepting of water.* The usual proviso as to nuisances or the erection of buildings follows.

Provisions Excluded from the Sub-Committee's Review.

117. *The Mining Code.*—Sections 18 to 27 of the Waterworks Clauses Act, 1847, regulate the position of statutory water undertakers in relation to mining interests. The effect of these provisions has already been examined by the recent Royal Commission on Mining Subsidence, and their recommendations are understood to be at present under the consideration of the Mines Department. Pending the outcome of that consideration, the Sub-Committee do not wish to offer any observations on these clauses.

* Cf. paragraphs 154 and 155 below, where the effect of section 12 is discussed.

118. *Breaking up of highways.*—The general powers of the undertakers to break up and temporarily interfere with streets and bridges within their limits of supply, for the purpose of laying their mains or other works, are governed by sections 28 to 34 of the Act of 1847. In view of the fact that the whole question of interference with the highways is already under review, and that the position of the water undertakers can properly be considered only in relation to the claims of the various other public bodies involved, the Sub-Committee do not feel that they can make any general recommendation at this stage.

119. The question of the undertakers' right to break up private streets and streets outside their limit of supply, and the amendment of the powers of the consumer in the breaking up of the highway for the laying of supply pipes, are dealt with elsewhere in this Report.*

120. *Security of reservoirs.*—The security of the reservoirs constructed by the undertakers is safeguarded, under the existing law, only by sections 3 to 11 of the Waterworks Clauses Act, 1863. The question of amending these provisions, and of tightening the control over the construction of these reservoirs, was brought into particular prominence by the disaster at Dolgarrog in 1925. The whole matter is understood to be under consideration by the Government, and the Sub-Committee have therefore not included these clauses in their review of the Act of 1863.

* See paragraphs 198, 199 and 19-39 respectively.

III.

PROCEDURE TO IMPLEMENT THE SUGGESTED REVISION OF THE WATERWORKS CLAUSES ACTS.

121. An attempt has been made to show the necessity for the revision of the Waterworks Clauses Acts and the directions which that revision must take if they are to accord with modern requirements in the machinery of water supply or to furnish any sort of uniformity in its conditions. It remains to consider the procedure by which this revision can be implemented. This is a question which falls rather beyond the limits of the Sub-Committee's enquiry, but it has naturally been impossible to avoid some discussion of it in its general bearing upon that enquiry, and it may be of value to draw attention to some of the factors which have emerged from the discussion.

122. If the need for revision is acknowledged, the first step will necessarily have to be the repeal of the existing Clauses Acts and the substitution of the new consolidated code. If the revision is to succeed in its purpose, provision will have to be made for the new clauses to be made uniformly operative within a reasonably short time. A difficulty at once arises. For the new provisions to become law they must be expressly incorporated either in the Special Acts or Provisional Orders of the several undertakers or in general legislation affecting a number of undertakings collectively, such as the Public Health Act 1875. The existing statutes, private and public, which incorporate the present Acts, would presumably remain unaffected in the absence of express stipulation to the contrary.

123. To enact, however, that the new provisions be deemed to be substituted wherever the old were already applicable would put many of the undertakers in an unfair position. If, for example, effect were to be given to the recommendation that baths and water closets should be included in the general rate for a domestic supply, many of the undertakers who at present levy additional charges for these conveniences would at once be penalised by the loss of that source of revenue. At the same time the raising of their domestic purposes rate would probably be prohibited by the statutory maximum prescribed by Parliament in their Special Act. Their only remedy would be to secure an increase in that maximum, and this would necessitate the promotion of a Bill or application for a Provisional Order, with all the consequent expense. The Sub-Committee feel that this is a course which cannot equitably be adopted. The same position would, of course, result from the general application of any other recommendations which would affect adversely the revenues of the undertakings.

124. Where a water undertaking is carried on by a local authority or water board, acting solely under Public Health Act powers, the difficulty would not arise. No statutory maximum rates and charges being prescribed for these undertakings, the loss of revenue entailed could be compensated by a proportionate increase in the charges levied, for which the local authority could, without further powers, provide. In these cases it is suggested that the new provisions, in so far as they are applicable, could be put into operation forthwith.

125. Where the undertakings rest, however, on the authority of Special Acts or Provisional Orders, the only expedient appears to lie in the initiation of a new and simpler procedure for the purpose. To wait until the new code is gradually incorporated in the ordinary course of local legislation would clearly be to defeat its primary object, while to provide for its immediate substitution wherever the old Acts were in force has been shown to be prejudicial to the undertaker. It is suggested, therefore, that a procedure by Ministerial Order, similar to that already employed in the Water Undertakings (Modification of Charges) Act, 1921, might be adopted. The Minister of Health should be empowered, on the application of the undertakers, to issue an Order putting into force within the limits of supply such of the provisions of the new Clauses Act as are required, repealing conflicting provisions in the undertakers existing Acts, and at the same time providing for any consequential increase, reduction, alteration or addition which appears to him to be necessary in the charges which the undertakers are authorised to levy. Such an Order should become Provisional, and require confirmation by Parliament, only where it is opposed and the opposition is not withdrawn. Interested parties would, of course, have the right to make representations to the Minister and to be heard at any inquiry held in connection with the application.

126. In the case of a number of undertakings conducted under special statutory powers, many of the new provisions will be found to be already in operation. It is anticipated that other undertakers will not fail to appreciate the desirability of bringing their practice into accord with those provisions which detailed investigation and, in most cases, actual experience have shown to be deserving of general application. With some simpler and less expensive machinery available for the amendment of their powers, it is felt that the adoption of the new Act would be generally sought and the desired uniformity accomplished reasonably quickly. It might be desirable at a later stage, however, for a limit to be set to the period within which these applications should be made. At the expiry of that limit the clauses could be given statutory effect in all cases.

IV.

GENERAL LAW RELATING TO WATER SUPPLY.

Introductory.

127. In the second stage of their enquiry the Sub-Committee have had under review the principal provisions of the general law relating to water supply, which differ from the Waterworks Clauses Acts in that they apply without express incorporation to all undertakers, or to specified classes of undertakers, collectively.

128. Any adequate consideration of the general law position must start from the assumption that all undertakers fulfil broadly similar functions, serve the same purpose and are confronted with a considerable body of common difficulties and common needs. It follows that, where no definite reason to the contrary exists, they should as far as possible be invested with similar powers, be subject to similar liabilities and have available the same methods of procedure. Local variations in the conditions of water supply admittedly render any complete equation of their position quite impracticable. None the less there exist at present a number of meaningless anomalies, resting often purely on status with no relation to actual requirements, which are probably to be ascribed to the gradual and piecemeal growth of water legislation rather than to any preconceived principle. The absence of subsequent codification on any wide scale has allowed these distinctions to survive, although most of them have never been intentionally established or deliberately maintained. Some of these, at least, it has been the object of the Sub-Committee's enquiry to remove.

129. In the case of those undertakers who work under special statutory powers, whether they be companies, individuals, local authorities or joint boards, the primary factor in their position under the general law is that of procedure, of the machinery for obtaining, altering or modifying the powers or duties which govern the conduct of their undertakings. The nature and extent of these powers and liabilities are regulated in the main by their Special Acts or Provisional Orders, and rest only in a minor degree upon the general law. It is to the question of procedure that the Sub-Committee wish to draw particular attention.

130. Clearly the procedure available to the undertakers, either to obtain authority for the initiation of their undertakings or to secure the amendment or extension of the provisions governing their working, should be as simple, expeditious and inexpensive as is compatible with proper safeguards for private rights and protection for those whose interests may be prejudiced. In addition there is the necessity, already emphasised, for greater uniformity,

for the abolition of anomalous distinctions between undertaker and undertaker in the machinery available to them.

131. It has long been realised that procedure by Private Bill involves an expense which is often prohibitive in the case of the smaller undertakings, and which may at least be damaging to many of the others.

There must frequently be cases among the smaller and less populous districts, in which the proper provision of a regular supply is desirable but the willingness of a prospective undertaker to shoulder the risk entailed, where only a small margin of possible profit will be available for the first few years, is outweighed by the costs of obtaining the necessary powers, and the establishment of a small statutory company is therefore discouraged. A costly procedure, however, affects not only the undertaker, but the consumer. The expenses of the promotion of a Private Bill inevitably fall on the consumer in the last resort, in the form of increased rates and charges, and serve indirectly to hinder the lowering of the price for a domestic or other supply.

132. An earlier attempt to deal with the difficulty is represented by the Gas and Waterworks Facilities Acts, 1870 and 1873. These Acts were passed to facilitate the obtaining of Parliamentary powers for the supply of gas and water. They enable an individual or a water company to apply for a Provisional Order (issued now by the Minister of Health), for the following purposes :—

- (1) The construction and maintenance of works, and the supply of water in districts where there is not already an undertaking authorised, by special statutory powers, to construct such works or to furnish a supply.
- (2) The raising of capital necessary for any of these purposes.
- (3) Agreements with other companies for a joint supply, or for the amalgamation of undertakings.

Powers for the compulsory acquisition of lands, and probably of water rights, are excluded from the scope of these Provisional Orders.

133. The Gas and Waterworks Facilities Acts, although they contributed to the simplification of procedure, did not carry that simplification sufficiently far. Quite apart from the restrictions where compulsory powers are in question, the Provisional Order procedure itself does not fully meet the difficulty. Any Order made by the Minister under these Acts requires confirmation by Parliament before it has effect, although there may be no opposition to it from any quarter and it merely authorises what is virtually an agreed proposal. This necessity for Parliamentary confirmation in all cases has been carefully considered by the Sub-Committee and they feel that there is an overwhelming case for its waiver under certain conditions.

134. When the authorisation of the establishment of an undertaking, or of the exercise of any specific powers by the undertakers, involves prejudice to any private rights or vested interests, where claims of third parties have to be nicely adjusted to the needs of water supply and the fair requirements of those who undertake to furnish it, the necessity for ultimate Parliamentary sanction should clearly be maintained. The final decision should rest, and rest solely, with the legislature itself, and not with any Department of Government. But where these considerations do not arise, the case is different.

When a proposal is not opposed from any quarter, after full opportunity for opposition has been afforded, where no objection is lodged and maintained by any interested third party, the Sub-Committee cannot find any adequate reason for the necessity of carrying that proposal to Parliament. Nor, in their opinion, is the position affected by the nature of the proposal, whether it be for the initial establishment of a company, the construction of works, the raising of capital, or for any other ordinary purpose. Where the proposal arouses no opposition, it should be possible for the Minister, if he is satisfied as to its merits, to grant it and grant it finally by Order.

135. In effect, the Sub-Committee recommend the supersession of the procedure under the Gas and Waterworks Facilities Acts by a new machinery, uniformly available to all statutory undertakers. The Minister of Health should be empowered, on the application of any local authority, water board, company or person, to make Orders conferring upon them all or any of the powers requisite for the purposes of establishing, carrying on, or extending a water undertaking. The Orders should become provisional only if opposed (and if the opposition is not withdrawn), or where the Minister for any reason thinks it desirable that they should, although unopposed, be submitted to Parliament for confirmation. It is to be emphasised that the Minister, in making Orders under his existing powers, invariably follows Parliamentary practice in the granting or rejecting of specific clauses. Wherever any innovation in the clauses sought appeared to depart from that practice, but to merit approval, it would always be possible to submit the Order which embodied it to Parliament for confirmation. In any case in which the proposal of the undertakers was not generally consented to, and objections were lodged, that confirmation would be obligatory. Subject to so comprehensive a safeguard the Sub-Committee cannot appreciate any valid ground on which exception can be taken to the suggested procedure, which has in its favour all the arguments of cheapness, directness and simplicity. These Orders, it is to be noticed, would be obtainable at any time, and would not be subject to the restricted periods and prescribed dates which govern the ordinary Provisional Order.

136. Moreover, the procedure is not new. Provision is already made for the issue of Ministerial Orders, which become provisional only if opposed, in the Public Health (Ships, etc.) Act, 1885, in the Land Drainage Act, 1918, and the Water Undertakings (Modification of Charges) Act, 1921. It has been strongly recommended, for the acquisition of water rights, by the Water Power Resources Committee in their Second and Final Reports. The proposal of the Sub-Committee is simply to extend this machinery to all the purposes of water supply, and so to complete the work of simplification foreshadowed by the Gas and Waterworks Facilities Acts in the case of companies. Some of the more important directions in which this simplification would be beneficially applied are outlined below, but it is to be emphasised that these examples are not intended in any way to be exhaustive, and that the new procedure is recommended equally for every purpose of the undertakers to which the existing procedure by Provisional Order or by Bill at present applies.

It is anticipated that in the case of the larger undertakings, where schemes are framed on a large scale and involve, for example, the abstraction of great quantities of water at considerable distances, it will still be preferable in many cases to proceed by Bill. Any Order would almost inevitably be opposed and its confirmation would be contested in Parliament. In these cases the procedure by Bill offers a more direct machinery, and expense might not be reduced in the long run by adopting the procedure by Provisional Order. Clearly, no definite line of demarcation can be attempted between schemes of this category and other proposals, but it is contemplated that all parties will generally recognise when a case is of such a nature as to make procedure by Bill desirable.

137. Turning to the position of those local authorities who supply water within their districts under their general Public Health Act powers, the Sub-Committee have concentrated mainly on two aspects. Firstly, the Public Health Act provisions have been examined generally to determine in what, if any, respects the position of these local authorities should be restricted, enlarged, or assimilated to that of the other undertakers. Secondly, certain of the provisions have been examined with regard to the merits of extending their application to undertakings conducted under special powers. It has been suggested that the water provisions of the Public Health Acts should be repealed and merged in one statute consolidating the general law relating to water supply. The Sub-Committee wish to emphasise that they regard consolidation on these lines as eminently desirable and that any future revision of the general law should be undertaken with this ultimate object in view.

138. The detailed recommendations relating to the general law are discussed in the pages which follow, after a review of the more important directions in which the new procedure by Ministerial Order should be available.

Scope of the Suggested Procedure by Order.

139. It has already been emphasised that the general simplification of procedure which the Sub-Committee recommend should extend to cover all the ordinary purposes of the undertakers to which the existing procedure by Provisional Order or Private Bill is now applicable. Without in any way limiting the scope of that general recommendation, it may be of advantage to indicate some of the more important directions in which this simplification would cheapen and expedite the obtaining of powers and place the various undertakers on a more equal footing. The existing machinery is outlined in each case, and the bare summary serves to reveal the extraordinary anomalies which the position presents.

Acquisition of Land and Water Rights.

140. Where a local authority are empowered to provide a supply of water for their district under the Public Health Act, 1875, they have under the Act an unlimited right to acquire lands by agreement for the purpose. In practice a limit is afforded by the necessity of obtaining the sanction of the Minister of Health where a loan is involved. They are also authorised to acquire by agreement any water rights, within or without their district, subject to the Minister's consent. For the compulsory purchase of lands they may, under section 176 of the Act, petition the Minister of Health for a Provisional Order authorising them to put into force the powers of the Lands Clauses Acts with respect to the taking of lands otherwise than by agreement. The Order relates, of course, only to the lands specified therein, and is subject to confirmation by Parliament in all cases.

141. It was at first considered that the compulsory acquisition of water rights, as distinct from lands, could be similarly authorised by a Provisional Order under this section. The decision of a Select Committee of the House of Lords in the case of West Houghton, 1877, and a subsequent opinion of the Law Officers of the Crown, have conclusively shown that this is incorrect. The only procedure open to these undertakers for the compulsory acquisition of water rights, as distinct from land, is the promotion of a Private Bill. Nevertheless rights in underground water, not flowing in defined channels, could be covered by the compulsory acquisition under section 176 of the surface lands to which the rights attach.

142. Mention should also be made of the additional power conferred upon local authorities by section 14 of the Housing, Town Planning, etc., Act, 1919, to abstract water from any river, stream or lake, for the purpose of affording a supply for houses which form part of a scheme made under the Housing Acts.

143. Statutory companies may generally acquire by agreement only the lands specifically authorised in their Special Acts, or in

Provisional Orders under the Gas and Waterworks Facilities Acts. Local authorities, supplying under a Local Act, are similarly restricted as a rule to the lands specified in that Act, or in an amending Provisional Order made under section 303 of the Public Health Act, 1875. Both these classes of undertakers, however, frequently obtain special powers to acquire further lands by agreement for the purposes of their undertakings. In some cases a definite limit is prescribed, in others a limit is given which can be exceeded only with the consent of the Minister of Health. They are sometimes further empowered to acquire by agreement, and without limit, lands required for the protection of their waters and waterworks.

144. For the compulsory purchase of land both must normally proceed by Bill. Local authorities have in some cases obtained the incorporation in their Special Acts of section 176 of the Public Health Act, 1875, and are therefore entitled to the Provisional Order procedure permitted by that section. If the section is not incorporated by the local authority, it may still be deemed to be available to them where the authorised limits of supply do not extend beyond their district,—their position in this respect being identical with that of a local authority working under the powers of the Public Health Act, 1875,—and where there is no restrictive provision in the Special Act which prevents recourse to the section. In practice, the question whether the section is available or not can only be determined by reference, in each case, to the Local Act and the particular circumstances. Compulsory purchase powers cannot be conferred upon a local authority by means of a Provisional Order under section 303 of the Act of 1875. For companies there is no alternative to procedure by Bill, and the machinery of the Gas and Waterworks Facilities Acts expressly does not extend to the acquisition of lands otherwise than by agreement.

145. The position of these undertakers with regard to water rights is rather more complicated. Authority to acquire specified water rights by agreement may be obtained in the Special Acts or, in the case of companies, in Provisional Orders under the Facilities Acts. Any further power of acquisition by agreement they may or may not possess. No generalisation is possible, and their position can be ascertained only by reference to the special statutes operative in each case. The general power, already mentioned, to acquire additional lands by agreement for the purposes of the undertaking, may be taken to cover any rights in underground water attaching to the lands acquired, but further authority may or may not be required before the undertakers can construct works for abstracting and using the underground water. Whether the right extends to surface water, e.g. springs of water, on those lands is much more doubtful. If the interests of third parties, or riparian owners, are directly affected, compulsory powers would presumably be necessary. In other cases, difficulties would in some instances be met by the

abstraction of the water before it reached the spring or before it ran in any defined channel, by means of wells or borings, but again statutory authority would probably be required for the construction of the necessary works.

146. For the acquisition of water rights otherwise than by agreement it is generally true to say that the only procedure available to these undertakers is to promote a Bill. In the case of local authorities working under Local Acts, there is definitely no alternative. With regard to companies, the Gas and Waterworks Facilities Act, 1870, expressly prohibits the authorisation, in any Order made under it, of compulsory powers to acquire lands, but it is not made clear that water rights are covered by the prohibition. The Act provides that, where it is proposed to abstract water from a stream, due notice of the intention is to be served on all owners, lessees and occupiers of mills, manufactories or other works using the stream, for a prescribed distance down the stream below the proposed point of abstraction. The Minister is to consider the application, and any objections which are made to it, and to determine whether or not it may be proceeded with. The view normally taken is that, if valid objections are lodged by an interested riparian owner and the parties are unable to come to an agreement, authority cannot be given in the Provisional Order for the abstraction of the water, which would prejudicially affect the objector.

147. The necessity for a simplified and uniform procedure is clearly revealed by a comparative review of the existing position. It is not intended, however, that the new machinery should operate to take away any existing right. The general powers which Public Health Act undertakers already possess of acquiring lands or water rights by agreement should continue to be vested in them, and no restriction is suggested upon the general powers which other undertakers may have obtained of acquiring lands for the purposes of the undertaking or for the protection of their waters and waterworks.

Construction of Works.

148. The relevant powers of local authorities working under the Public Health Acts rest on sections 51-54 of the Act of 1875. Urban or rural authorities are given a general power to construct and maintain waterworks, dig wells or do any other necessary acts, for the purposes of providing a supply of water for their district. Where a loan is involved, the sanction of the Minister of Health is required. They are prohibited from constructing any works within the limits of supply of a statutory company, if and so long as that company are able and willing to afford a sufficient supply for all reasonable purposes for which the local authority require it. A provision frequently appears in the Special Acts of statutory companies, that if at the end of a prescribed period the company are not furnishing, or prepared on demand to furnish, a sufficient supply in accordance with their Act throughout the district of any local authority

within their limits, the local authority may provide a supply in accordance with the provisions of the Public Health Act, 1875.

149. When objections are lodged, by persons affected, against the construction of any reservoir (other than a service reservoir or tank of not more than 100,000 gallons capacity) the work may not be commenced without the sanction of the Minister. Due notice of the intended works must be given, in newspapers circulating in the district.

150. For statutory companies, local authorities and others working under special powers, authority for the construction of works must normally be obtained by Bill or by Provisional Order. It relates only to the works specified in it, and such works as are purely ancillary to them, and confers no general power. For companies there is ordinarily no exception. A local authority may, however, in certain cases possess some more general authority by virtue of their Local Act or Order.

151. Provisional Orders are obtained, for this purpose, by companies or individuals under the Gas and Waterworks Facilities Acts, and by local authorities (where it is desired to amend an existing Local Act) under section 303 of the Public Health Act, 1875.

152. The Sub-Committee feel that the new procedure should cover the construction, alteration or enlargement of impounding reservoirs, weirs, intakes, and other works for the abstraction or utilisation of surface waters, subject to proper conditions as to compensation water and the limits of the quantity to be abstracted. It is not intended that the general powers enjoyed by Public Health Act undertakers should in any way be prejudiced. At a later stage in this Report* some relaxation of the restrictions imposed upon them in constructing works within the limits of a statutory company is suggested.

Sinking of Wells, Shafts, and similar Works.

153. Under section 51 of the Public Health Act, 1875, local authorities (and also joint water boards established under the Act) supplying under their general powers are authorised to construct wells and similar works, and are subject only to the control provided in practice by the necessity of obtaining the consent of the Minister of Health to any loan involved.

154. Other statutory undertakers, whether companies, local authorities or joint water boards, if they wish to obtain powers to abstract underground water for the purposes of public supply, must proceed by Private Bill or apply for a Provisional Order,

* Paragraphs 175-177 below.

requiring confirmation by Parliament. The general practice of Parliament is to confine the undertakers to the sites specifically enumerated in their Act or Order. Under section 12 of the Waterworks Clauses Act, 1847, which is always incorporated, they are empowered to sink such wells and shafts as they may think proper upon the lands authorised to be taken by them. It is now established that this right does not extend to lands other than those on which the works expressly authorised by their Act or Order are to be constructed. Where, for instance, they have power to acquire additional lands by agreement for the purposes of the undertaking, they have no implied right to use those lands for the construction of additional wells or pumping stations for the utilisation of underground water.

155. Broadly speaking, the only rights of these undertakers are (a) to construct such wells, shafts and similar works as they are specifically authorised to construct on definite sites, by virtue of their statutory powers, or (b) to duplicate or alter works which relate to the same source of supply, or (c) generally to execute such works as are merely ancillary to the works already authorised for the development of that source of supply. The principle has been given definite expression in a number of Special Acts, by a clause based upon clause 8 of the House of Lords Model Water Bill. This clause prohibits the undertakers from constructing any works for the taking or intercepting of water from any lands acquired by them, unless those works are statutorily authorised and the lands, on which their construction is proposed, are specified in the statute.

156. It should be explained that the position of these undertakers does not uniformly fall within the general rules outlined. There are districts in which they may possess some more general additional powers in this direction, others in which they may be subject to closer restrictions. The precise rights of any undertaker can be determined only by reference to the special statutory provisions under which he works.

157. In addition to their primary recommendation, that the acquisition of powers for the construction of wells, shafts and other works for the abstraction of underground water for purposes of public supply should fall within the scope of the procedure already outlined, the Sub-Committee wish to draw attention to the recommendations put forward in their Report on Underground Water. In that Report certain suggestions were offered for the better protection of underground sources. It was recommended, *inter alia*, that in certain circumstances a licence of the Minister of Health should be necessary, in any area to which the protective code suggested has been applied, before any authority or person could lawfully commence :—

- (a) To construct any well, boring or other work involving or likely to involve the abstraction of underground water.

- (b) To extend any existing work for the purpose of abstracting additional quantities of underground water.
- (c) To use or extend any of the works expressly excepted in the recommendation for any other purposes than those for which the exception was intended.

158. A Public Health Act undertaker would be required to comply with the new provisions equally with private undertakers and others, if their district is one to which the provisions have been applied. The new machinery of the Ministerial Order is not intended to absolve any undertaker from complying with those provisions, where compliance would otherwise be required. Those who propose to avail themselves of the simpler machinery should be able, however, to obtain both the Order and the necessary licence under the one application to the Minister.

Purchase and amalgamation of undertakings.

159. Section 51 of the Public Health Act, 1875, empowers the local authorities working under it to take on lease or hire, or with the consent of the Minister of Health to purchase, any waterworks and any rights, powers or privileges of a water company. By section 63 the directors of the company are enabled, subject to certain preliminary resolutions of the members, to sell and transfer their undertakings to the local authority on terms to be settled by agreement.

160. With regard to amalgamation, local authorities may, by section 279 of the Act, combine to form a united district for the purposes of water supply, if they obtain from the Minister of Health a Provisional Order to that effect, requiring confirmation by Parliament. The Provisional Order would provide for the establishment of a Joint Board, in whom the new undertaking would vest, and to whom any existing waterworks provided by any of the constituent authorities could be transferred. The powers and liabilities of the new undertaking would be defined in, and rest upon, the Order and it is provided that the corresponding rights and duties of each constituent district shall to that extent lapse.

161. In the case of other undertakers special statutory authority must be obtained where the purchase or amalgamation of any undertakings is contemplated. The Provisional Order procedure, under the Gas and Waterworks Facilities Acts, is available to companies so long as compulsory powers are not involved. Local Authorities, working under a Local Act might obtain an amending Provisional Order, under section 303 of the Public Health Act, 1875, enabling them to acquire by agreement an existing undertaking. Beyond that, they have no alternative to procedure by Bill. It will be noticed that each of these undertakers can obtain compulsory powers only by Bill.

Revision of Charges.

162. The levying of water rates or rents by local authorities operating under the Public Health Acts is regulated by section 56 of the Public Health Act, 1875, and sections 9 and 10 of the Public Health (Water) Act, 1878. Under section 58 of the former Act they may also make agreements with any person to supply water by measure at an agreed charge.

163. Generally, where they furnish a domestic supply to any premises under those Acts, they are empowered to charge a water rate or rent in respect of that supply at their discretion. On the application of any ten ratepayers in an urban district, or any five in a contributory place, they can be compelled to do so, but the amount of the rate levied still remains discretionary. Rural authorities who provide stand-pipes for the supply of water may generally recover water rates or rents from the owners or occupiers of dwelling houses within a radius of 200 feet from the stand-pipe.

164. Under section 62 of the Act of 1875 the local authority may in certain cases call upon the owners of houses without a proper supply of water to obtain such a supply within a specified time, provided that the cost of furnishing it does not exceed the rates authorised by any Local Act in force in the district. Where no Local Act is in force, the prescribed limit of cost is two pence a week or such sum as the Minister of Health may determine. Section 8 of the Act of 1878 provides that where application is made to the Minister to determine a reasonable cost under section 62,* the Minister may fix, by Order, a general scale of charges for the whole or any part of the district. With this exception the scales of charges leviable by these undertakers are therefore generally discretionary and variable without the necessity of any authorisation or sanction, and it is clear that the question of procedure does not arise.*

165. In the case of undertakers whose power of charging is regulated by the Local Acts or Provisional Orders on which their undertakings rest,—and this includes individual undertakers, water companies, certain water boards, and certain local authorities,—any alteration in the prescribed scales can generally be obtained only by Private Bill or Provisional Order.

166. One important exemption from this procedure is afforded, by the Water Undertakings (Modification of Charges) Act, 1921. That Act simplifies the revision of charges where revision can be shown to be necessary “for the purpose of meeting any increase in the cost and charges of, and incidental to, the carrying on of the undertaking attributable to circumstances arising since the fourth day of August, 1914, which were beyond the control of, and

* In paragraph 183 below, the Sub-Committee suggest that provision should be made for compelling the local authority to make adequate use of the powers of charging, in cases where it is desirable.

could not have been reasonably avoided by, the undertakers.” The revision is effected by an Order of the Minister of Health, on the application of the undertakers, and the Order becomes provisional only if opposed, or if the Minister thinks that confirmation by Parliament is for any reason desirable.

167. Further, under their Local Acts and Provisional Orders, many undertakers have obtained power to increase their maximum rates in recent years, to meet post-war conditions, and in most of these cases the Minister of Health has been empowered to revise the new maxima from time to time by Order, on application. But this revision is confined generally to cases in which the Minister is satisfied that the circumstances of the undertaking have materially changed, or in the case of companies, that there has been a substantial alteration in the “cost of labour and materials or other circumstances affecting the undertaking.” Periodic revision is usually restricted to intervals of three or five years.

168. The procedure by Ministerial Order for the revision of charges is therefore already established in a limited degree, and requires only extension to afford a general alternative in all cases.

Borrowing Powers and Capital.

169. Where a local authority supplies or proposes to supply under the Public Health Acts, section 233 of the Act of 1875 makes necessary the sanction of the Minister of Health to the borrowing of money to defray the costs involved. Certain statutory restrictions upon this borrowing power are imposed by reference to the assessable value of the district, but the effect of the Local Government Act of this year will be to remove those restrictions in the future, and the only limit in practice will be the necessity for the Minister's sanction.

170. Local authorities working under a Local Act usually obtain special powers of borrowing for the purposes of their undertaking, either within a prescribed limit, or without limit but subject to the consent of the Minister of Health. The latter practice is becoming increasingly general, and is regarded by the Sub-Committee as providing a perfectly adequate safeguard against excessive borrowing. It represents what will in future be the position of the general Public Health Act undertaker. In cases, however, where some prescribed limit is still retained, it can be extended only by an amending Provisional Order under section 303 of the Public Health Act, 1875, or by Private Bill.

171. Statutory companies obtain specific authority for the raising of capital within prescribed limits in the Special Acts or Provisional Orders governing their water undertakings. Any extension of those limits can be obtained only by Bill or by Provisional

Order under the Gas and Waterworks Facilities Acts. The statutory company cannot therefore obtain power to raise additional capital without recourse to Parliament.

172. The extension of borrowing powers and the raising of additional capital offer an important direction in which simplified facilities should be afforded by the amended procedure already advocated.

Water Provisions of the Public Health Acts.

Purchase of Company Undertakings.

173. Local authorities at present have power, under section 51 of the Act of 1875, to purchase, with the sanction of the Minister of Health, any waterworks, water or right to take or convey water, within or without their district, and any rights, powers and privileges of any water company. Section 63 gives power to the directors of any company, subject to certain resolutions of their members, to sell and transfer their undertaking, or any of their powers, privileges or works to the local authority.

174. It is suggested, as an extension to this section, that in cases where the area of supply of a water company is not wholly comprised within the local authority's district, the latter should be empowered to purchase the whole of that company's undertaking, subject to the consent of all other local authorities having jurisdiction within the company's limits and to the sanction of the Minister of Health. The company, in such cases, should be enabled to sell and transfer their undertaking to any local authority within their limits. Provision should be made for an appeal to the Minister of Health, where in the opinion of the applicants, the consent of any other local authority to the proposed purchase is being unreasonably withheld.

Limitations where statutory companies exist.

175. Under section 52 of the Act of 1875 the local authorities are prohibited from constructing any waterworks within the limits of supply of a statutory company, if and so long as that company are able and willing to supply water proper and sufficient for all the reasonable purposes for which the local authority require it. Differences of opinion arising between company and authority are to be settled by arbitration in the manner provided by the Act.

176. The effect of this restriction, taken in conjunction with the undoubted practice of some undertakers of obtaining statutory powers to supply areas to which they have probably no intention of furnishing an immediate supply, means in effect that the district, or part of the district, of a local authority may in many cases be virtually precluded from obtaining a proper supply of water at all.

The suggestion already put forward that the local authority should be put in a position to compel a supply by making a requisition under section 35 of the Waterworks Clauses Act, 1847, or to enter into agreements with the undertakers, guaranteeing regular payment in consideration of their extending their mains to furnish a supply, would afford a partial solution of the difficulty. But this requisition or guarantee may be an unduly expensive method of ensuring a supply, and is not a sufficient remedy for the virtual sterilisation of districts by water undertakers.

177. It is therefore recommended that the local authorities should be given the right to apply to the Minister of Health for the removal of any parish, or defined part of a parish, from the limits of supply of undertakers who, after due notice has been given, still fail to afford a supply. The Minister should be empowered to effect the removal by Order, where in his opinion circumstances justified it. It might be desirable for the Order to attach the parish, if necessary, to the limits of supply of other statutory undertakers who were prepared to accept the obligation to supply.

Maintenance of constant supply.

178. Under section 55 of the Act of 1875, the local authority are under obligation to provide and maintain, in any waterworks constructed or purchased by them, a supply of pure and wholesome water. Where they lay pipes for the supply of any of the inhabitants of their district, the water may be constantly laid on at such pressure as will carry it to the top storey of the highest dwelling house within the area supplied.

179. The maintenance of a constant supply under pressure is therefore purely discretionary, and the Sub-Committee do not wish to suggest any additional obligations in this respect. They recommend, however, for insertion in the general law and for uniform application to every undertaker, a provision to the following effect:—

- (1) All water undertakers shall, unless prevented by frost, unusual drought, or unavoidable cause or accident of any other nature, provide and maintain in the waterworks and pipes provided and maintainable by them a supply of pure and wholesome water sufficient for the domestic use of all the inhabitants of their area of supply who are entitled to demand a supply and are willing to pay water rate for it.
- (2) If any water undertakers fail to comply with this section, they shall be liable to a penalty not exceeding ten pounds, and in addition to a daily penalty not exceeding forty shillings.

- (3) Proceedings for an offence under this Section may be taken by any local authority (if not themselves the undertakers) in whose district any part of the area of supply of the undertakers is situate, or by any water consumer in that area.
- (4) Nothing in this Section shall require water undertakers to afford a supply of water constantly laid on.

180. The effect of this provision upon the local authorities who work under the Public Health Acts will be to make more clear their position where a piped supply is afforded, while their present discretion in maintaining a constant supply under pressure will remain unaffected.

181. It might also be desirable to provide for the power to take samples of water from any land or works, for the purpose of ascertaining whether the undertakers are performing their statutory duties with respect to the supply of pure and wholesome water. The power could properly be conferred, subject to proper conditions as to its exercise, on medical officers or other authorised officers of a local authority (if not themselves the undertakers), or any consumer authorised by Order of the Justices or any person authorised by the Minister of Health. A correlative power should be given to the undertakers, by means of their officers, to enter on any lands from which water is obtained or supplied, for the purpose of detecting any likely cause or source of pollution, and to take samples either of water or of any substance, solid or liquid, which appeared likely to be conducive to such pollution.

Levying of Rates and Charges.

182. Under section 56 of the Act of 1875, the local authority are empowered to levy a water rate in respect of the supply they afford to any premises, and to enter into agreements for the supply of water on terms to be agreed with the consumer. Under section 10 of the Public Health (Water) Act 1878, where a sanitary authority supply water under their general powers in any urban district or contributory place, they may be compelled to charge water rates or rents in respect of that supply, on the application to them of any ten ratepayers in such urban district or any five ratepayers in such contributory place. A purely nominal charge, however, would apparently meet the requirements of this section as no provision is made for regulating the amount of the rates or rents to be so levied.

183. Under the existing system, therefore, the obligation may be put upon a number of ratepayers, who do not themselves receive a supply, of contributing to the expenses of furnishing a supply to others. In these cases, it is quite realised, the interests of public health and the indirect advantages to the non-consumer of the

existence of an adequate supply of water in the district generally make it undesirable that the costs of conducting the water undertaking should necessarily be met only by the actual consumers. The Sub-Committee are convinced, however, that there is need for some further machinery to compel the authorities to make such use of their powers of charging as is compatible with the interests of their district as a whole, and they suggest an extension of the remedy provided by the Public Health (Water) Act, 1878, on these lines. The Minister of Health, if he is satisfied, on the application of any ten ratepayers in any urban district, or any five ratepayers in any contributory place, that the local authority have not made adequate use of their powers of charging in respect of the water supplied by them, should be empowered to make such Order in the matter as may seem to him in all the circumstances of the case to be reasonable.

Incorporation of Waterworks Clauses Acts.

184. Section 57 of the Act of 1875 expressly incorporates, subject to certain conditions, the Waterworks Clauses Act, 1863, and the provisions of the Waterworks Clauses Act, 1847, which relate to the breaking up of streets for the laying of pipes, the laying of communication pipes by the undertakers and by the consumers, the waste, misuse and fouling of water, and the payment and recovery of water rates. It has already been suggested that the revision of these clauses, recommended in the second part of this Report, should be immediately brought into operation in the case of Public Health Act undertakers.*

Bulk Supplies.

185. Under section 61 of the Act of 1875 any local authority for the time being supplying water within their own district may, with the sanction of the Minister of Health, afford a supply to the local authority of any adjoining district on such terms as may be agreed between them, or in the case of dispute, as may be determined by arbitration.

186. There is a clause commonly allowed by Parliament in local legislation, and included in the Model Water Bill of the House of Lords, of which the Sub-Committee feel every water undertaker, irrespective of status, should have the benefit. It enables the undertakers to effect agreements with any local authority, company or person, for the supply to them of water in bulk beyond their authorised limits of supply. Terms and conditions are to be settled by agreement. It is provided that no bulk supply is to be given unless the consent of statutory undertakers supplying water in the area concerned is first obtained, nor where the furnishing of a bulk supply by the undertakers would interfere with the domestic supply

* Paragraph 124 above.

within their authorised limits. The proviso to the clause should be read in conjunction with the previous recommendation that the Minister of Health should have power, under certain conditions, to remove a parish or part of a parish from the limits of supply of any statutory undertaker.*

187. Similarly general application should be given to a further common clause, which enables the undertakers to enter into and carry into effect agreements with any local authority, company, body, or person supplying water under Parliamentary authority, for the purchase of water in bulk on terms and conditions to be agreed.

Power to close polluted wells, etc.

188. Where a representation is made to the local authority, under section 70 of the Act of 1875, that the water in any well, tank or cistern or supplied from any public pump, which is used or likely to be used by man for drinking or domestic purposes or for the manufacture of drinks for the use of man, is so polluted as to be injurious to health, the authority may apply to a court of summary jurisdiction for a remedial Order. In the Sub-Committee's view it should not be necessary to delay such action until actual pollution has occurred, or is alleged to have occurred, and the provision should be extended to inquiry into cases where there is a reasonable likelihood of such pollution. Cases where the water is used or likely to be used in the manufacture of foods for the use of man should also fall within the section.

Power to compel houses to be supplied.

189. The Public Health (Water) Act, 1878 (section 3), puts upon rural district councils the duty of ensuring that every occupied dwelling house in their area has within reasonable distance an available supply. Where it appears that such a supply is not available, they may take steps to see that a supply is obtained. But they must be satisfied that it can be provided at a reasonable cost, not exceeding a capital sum on which interest at the rate of 5 per cent. per annum would amount to two-pence a week, or three-pence a week where the Minister of Health authorises it. Further, the conditions as to the preliminary notices to be served on the householder are prescribed in detail.

190. It is recommended that the formal procedure prescribed by the section where the local authority wishes to put this power into operation should, as far as possible, be shortened and simplified, and that the prescribed limitation on capital expenditure should be amended to a sum on which the interest at 5 per cent. per annum

* Paragraph 177 above.

would not exceed four-pence a week or such greater sum as the Minister may sanction. At the same time four-pence should be substituted for two-pence in the corresponding section 62 of the Act of 1875.

Water supply in newly erected houses.

191. Section 6 of the Public Health (Water) Act, 1878, makes it unlawful in any rural district for the owner of any dwelling-house erected or re-built after the date of the Act to occupy it or allow it to be occupied, unless he obtains from the local authority a certificate that a sufficient supply of wholesome water is available within a reasonable distance. Provision is made for application to a court of summary jurisdiction where the certificate is withheld.

192. Section 7 of the Act puts upon rural authorities the duty of from time to time ascertaining the condition of the water supply within their district, and confers upon their authorised officers certain powers of entry for that purpose.

193. It is recommended that the provisions of these two sections should be extended to urban districts in all cases. The Minister of Health has already power, under section 11 of the Act, to extend by Order any of the powers and duties conferred or imposed by the Act upon rural authorities to specific urban district councils. Further, for the more effective enforcement of section 6, it is suggested that the penalties of the section should be extended, and the owner who occupies or permits to be occupied any house in contravention of the section should be liable, in addition to the immediate penalty not exceeding £10, to a daily penalty not exceeding twenty shillings.

Other General Law Amendments.

Laying of Mains.

194. Reference has already been made to the general powers of the undertakers in relation to the laying and maintenance of mains under the highway. In their review of the Waterworks Clauses Acts the Sub-Committee have pointed out that the subject is one on which no general recommendations could properly be made by them at present, but they wish to draw attention to three provisions which fall within the scope of this part of this Report.

195. Firstly, under section 54 of the Public Health Act, 1875, local authorities are invested with the same rights, and subjected to the same restrictions, in the carrying of water mains within or without their district as they are in the carrying of their sewers under that Act. Within their district, therefore, they may carry their mains into, through, or under any private lands—subject only to the payment of compensation for damage, under section 308

of the Act,—provided that on the report of their Surveyor it appears to be necessary and that reasonable notice in writing has been afforded to the owners or occupiers concerned. Before commencing the laying or extension of mains outside their district, six weeks' notice* of the work must be given, and where objections are lodged and not withdrawn, by persons affected, the sanction of the Minister of Health is required to the work.

196. Other undertakers, as a rule, have not this right. In the case of local authorities and water boards, it is sometimes expressly provided in their local Act that the powers of section 54 (above) are to apply. Apart from particular enabling provisions of this kind, undertakers working under special powers are subject generally to section 29 of the Waterworks Clauses Act, 1847, and are prohibited from entering on private lands for the purpose of laying their pipes, unless the consent of the owners and occupiers has been previously obtained. Without this consent, they are confined to the renewal, repair, or alteration of existing pipes on private lands.

197. There is no real justification for this distinction, and it is strongly recommended that all undertakers should be invested with the same powers and be placed on the same footing, in this respect as local authorities under the provisions of the Public Health Act, subject to one minor alteration of those provisions; the report of the surveyor, by which the work must be authorised under section 16 of the Act of 1875, should no longer be necessary. It is understood to be in the majority of cases a mere formality. Clearly it should rest with the undertakers themselves, upon the advice of their qualified officers, to decide as to the necessity of exercising the right.

198. Secondly, attention is drawn to the right conferred upon local authorities by section 80 of the Public Health Act, 1925. On the application of the owner or occupier of any premises abutting on a private street within their limits of supply, they may supply those premises and for the purpose lay down, maintain and repair pipes in that street. The Waterworks Clauses Acts are then to apply in this connection, as if section 29 were excepted from incorporation. Exception is made in favour of private streets vested in certain statutory bodies. A similar clause appears in the Model Water Bill and is frequently embodied in the Special Acts of statutory companies. The Sub-Committee recommend its general application to every undertaker.

199. Thirdly, there is a clause which appears in several of the recent Special Acts, and which merits incorporation in the general law. It deals with cases where the limits of supply are bounded

* See Section 18, Public Health Act, 1925.

by, or abut on, a street which is wholly outside them, and where it is desired to supply premises which front that street but are themselves within the limits. In such cases the undertakers may exercise the same powers in breaking up that street for the laying, maintenance, inspection, repair and renewal of pipes as are exercisable by them with respect to streets within their limits of supply. The corresponding power to the consumer of breaking up the street for the laying of his supply pipe will no longer be required, in view of the transference of these rights to the undertakers already recommended in this Report.

Service Reservoirs.

200. Public Health Act authorities, supplying water under their general powers, have a right to construct such service reservoirs as they may require for their undertakings without obtaining any further statutory authority for their construction, provided always that the capacity of those reservoirs does not exceed 100,000 gallons. Where that limit is to be exceeded, the provisions of section 53 of the Act of 1875, as amended by section 78 of the Public Health Act, 1925, must be complied with, and notice thereunder of the intended work must be given. If objections are lodged by persons affected, and are not withdrawn, the work cannot be commenced until it is authorised by the Minister of Health, after a local inquiry into the propriety of the work.

201. It is again felt to be desirable that this power enjoyed by undertakers under the Public Health Acts should be extended equally to those other undertakers who are at present usually obliged to seek specific covering authority from Parliament for the construction of their service reservoirs in each case. Sufficient safeguards would still be afforded in practice by the limit of capacity, the necessity of seeking special powers where compulsory acquisition of any site is contemplated, and by the provisions (already under consideration with a view to revision) relating to the security of reservoirs and the conditions of their construction. Within those limits the effect of further restriction can only be to hamper the effective administration of the undertaking, for which the maximum discretionary power compatible with the public interest is essential. Further, the advantages of any system whereby the expense of private Bill legislation may justifiably be avoided have already been emphasised.

Minor Amendments.

202. *Copies of valuation lists.*—Section 74 of the Metropolitan Water Board (Various Powers) Act, 1907, empowers the Board, for the purpose of determining the amount of their rates and charges, to inspect and take copies or extracts from valuation lists and similar documents relating to premises within their limits of supply.

On the application of the Board, certified copies or extracts of such lists are to be furnished to them by any person having custody of them, at a fee to be agreed or, failing agreement, to be determined by the Minister of Health.

203. In view of the fact that the water rates leviable by the majority of undertakers are assessed upon a basis ascertainable from the current valuation lists, the Sub-Committee feel that the power to call for access to these lists and the provision of certified copies at a proper charge should be expressly conferred on all undertakers. It is quite realised that in most cases no difficulty is likely to be experienced in obtaining the necessary information from these lists, but at the same time it is desirable that some definite power should be available.

204. The precedent of section 43 (2) of the Rating and Valuation Act, 1925, might perhaps serve as a general model for a new clause on these lines. It provides that, where a surveyor of taxes applies to any rating authority for a copy of their current valuation lists or rates for the time being in force, or any extract therefrom, they are to furnish the copy, certified if required, at a fee not exceeding five shillings for every hundred entries numbered separately.

205. *Temporary discharge into streams.*—The following clause is based on current local legislation. For convenience it may be quoted in full:—

- (i) For the purpose of executing, constructing, laying down, enlarging, extending, repairing, cleansing, emptying, or examining any reservoir, filter bed, well, adit, main, pipe or other work of the undertakers, the undertakers may cause the water in any such work to be discharged into any available stream ditch or watercourse:

Provided that any water so discharged shall, so far as may be reasonably practicable, be free from mud, solid or offensive matter and, if discharged into waters containing fish, from other matter injurious to fish or spawn or spawning beds or food of fish.

- (ii) In the exercise of the power conferred by this section the undertakers shall do as little damage as may be, and shall make full compensation to all persons for all damage sustained by them by reason or in consequence of the exercise of such power, the amount of compensation to be settled in cases of difference by arbitration under and pursuant to the provisions of the Arbitration Act, 1889.

The Sub-Committee recommend that the clause be included in the general law, except that it is worthy of consideration whether procedure by an official arbitrator, as provided in the Acquisition of Land (Assessment of Compensation) Act, 1919, should not apply to arbitrations under the clause.

206. *Power to make superannuation and other allowances.*—It is suggested that general effect should now be given to the following enabling clause which represents an amalgamation of two common provisions in local legislation. The clause will apply, of course, only in the case of company undertakings.

- (1) The undertakers may grant such gratuities, pensions, or superannuation allowances, or make such other payments as they may think fit to any employees of the undertakers or where in their opinion adequate provision is not otherwise made to the widow, or family, or any dependent of any such employee.
- (2) The undertakers may enter into and carry into effect agreements with any insurance company or other association or company for securing to any such employee, widow, family or dependant as aforesaid such gratuities, pensions, allowances or payments as are by this section authorised to be granted or made.
- (3) The undertakers may if they think fit establish and maintain a fund to be called "the pensions fund" and pay out of the pensions fund gratuities of any sum or pensions or other allowances or benefits to any employees of the undertakers who may be contributors to the fund, or to the widow family or dependants of any such employees, and the pensions fund shall be applicable only for the payment of such gratuities, pensions allowances and benefits as aforesaid, and for no other purpose whatsoever.
- (4) The undertakers may also prepare, put in force and from time to time modify, alter, or rescind a scheme prescribing the terms and conditions on which the employees of the company or any classes of such employees may become contributors to the pensions fund, and the contributions to be made by such employees, and the gratuities pensions allowances or benefits to which such contributors shall be entitled.
- (5) The undertakers may apply the revenues of the undertaking for all or any of the purposes of this section, including the purpose of maintaining the pensions fund at an adequate amount.
- (6) The powers conferred on the undertakers by sub-sections (3), (4) and (5) of this Section shall be in addition to the powers conferred by sub-sections (1) and (2) thereof.
- (7) In this section the word "employees" includes all officers, servants, workmen and other employees of the undertakers.

- (8) The undertakers may subscribe or make donations to any fund raised in case of national emergency and to infirmaries, hospitals, convalescent homes, and other institutions and objects, and to the benevolent and sick funds of the employees.

207. *Dwelling houses for employees.*—Local authorities commonly obtain special powers to purchase or take on lease dwelling houses for the employees of their water undertaking, and to erect, maintain or let such houses on any lands vesting in them for the purposes of the water undertaking, or (subject to the terms of the lease) leased to them for the purpose. In the case of companies a similar clause often provides that the company may hold, acquire, maintain and let houses, cottages, offices, and other buildings for their employees or for the purposes of their undertaking, and may erect maintain and let any such buildings on any lands belonging to or leased to the company. It is suggested that the effect of these clauses should now be embodied in the general law in a form suitable for uniform application to all undertakers.

208. In conclusion the Sub-Committee wish to place on record their appreciation of the services of Mr. R. J. Simpson, of the Ministry of Health, whose wide experience and general knowledge have been most helpful, and whose assistance in the preparation of this report has been invaluable. To Mr. J. M. K. Hawton, who has acted as secretary, the Sub-Committee tender their very sincere thanks.

A. R. ATKEY (*Chairman*).

ALFRED B. E. BLACKBURN.

A. E. CORNEWALL-WALKER.

FRED. W. MACAULAY.

WILLIAM TERREY.

APPENDIX A.

Draft clauses embodying the proposed revision of the Waterworks
Clauses Acts.

Obligation to Supply.

1. *Amendment of section 35, Waterworks Clauses Act, 1847.*

The undertakers shall provide and keep in the mains to be laid down by them a supply of pure and wholesome water, sufficient for the domestic use of all the inhabitants of the town or district within the limits of the special Act, who, as hereinafter provided, shall be entitled to demand a supply, and shall be willing to pay water rate for the same; and such supply shall, unless otherwise provided in the Special Act, be constantly laid on at such a pressure as will make the water reach the top storey of the highest dwelling-house within the said limits; and the undertakers shall cause to be laid down mains and such parts of the supply pipes as they are required under the provisions of this Act to lay down at their own expense, and shall cause water to be brought to every part of the town or district within the limits of the special Act whereunto they shall be required by so many owners or occupiers of dwelling-houses in that part of the town or district, as that the aggregate amount of water rate payable by them annually at the rates specified in the special Act shall be not less than one-eighth part of the expense of providing and laying down the said mains and parts of the supply pipes; provided that no such requisition shall be binding on the undertakers unless such owners or occupiers shall severally execute an agreement binding themselves to take such supply of water for three successive years at least.

2. *Requisition of supply by district councils on behalf of owners and occupiers.*

Any requisition which may be made under the preceding section by owners or occupiers of dwelling-houses requiring a supply of water may be made by the council of the district, whether urban or rural, on behalf of such owners or occupiers, and shall be binding on the undertakers if the council execute an agreement binding themselves to pay for three successive years at least for the supply of water to the dwelling-houses in respect of which the requisition was made the amount which would have been payable under the said section by such owners or occupiers.

3. *Guarantees of payments by district councils.*

(i) Any urban or rural district council whose district is in whole or in part within the limits of supply of the undertakers may give and enter into any guarantee or contract for securing payment to the undertakers of such periodical or other sum or sums at such time or times in such manner and subject to such stipulations as may be agreed by and between such council and the undertakers for the purpose of or with respect to the providing or laying down by the undertakers of any main pipe or works for the supply of water within any part of such district.

(ii) The giving of such guarantee and the performance of any contract in relation thereto shall be deemed to be a purpose for which under the provisions of the Public Health Act, 1875, they may incur expenditure, and any such council may raise in like manner as money may be raised under the provisions of that Act as amended by any subsequent enactment any money which may become payable to the undertakers under this section.

(iii) Nothing in this section shall be deemed to authorise any such urban or rural district council to use any water supplied by the undertakers under any such guarantee or contract as aforesaid in any part of the district of such council which is beyond the limits of supply and within the limits for the supply of water of any other authority supplying water under Parliamentary authority without the consent of such other authority.

Supply Pipes.

4. *Definition of supply pipe.*

The words "supply pipe" shall mean a pipe directly subject to water pressure from the mains of the undertakers, including the pipe between the main and the premises to which water is supplied.

5. *Conditions to be fulfilled by owner or occupier desirous of a supply.*

Any owner or occupier of any dwelling-house or part of any dwelling-house within the limits of supply, who desires to have water from the water-works of the undertakers brought into his premises, shall be required to comply with the following conditions:—

- (a) He shall pay or tender to the undertakers, when or prior to giving the notice prescribed by sub-section (c) hereunder, the portion of the water rate in respect of such premises by this or the special Act directed to be paid in advance.
- (b) He shall lay that part of the supply pipe which is not in or under any street,* first obtaining any necessary consents from the owners and occupiers of the ground traversed by such part of the pipe. The bore, strength and material of any such supply pipe shall conform to the byelaws of the undertakers for the time being in force applicable thereto, or where there are no such byelaws in force shall be such as are approved by the undertakers, or in cases of dispute as is settled in England and Wales by a court of summary jurisdiction.
- (c) He shall, before he begins to lay any such part of a supply pipe, give to the undertakers not less than fourteen days' notice in writing of his intention so to do, and the said notice shall be deemed to be a request to the undertakers to carry out the works referred to in the next succeeding section.

6. *Conditions to be fulfilled by the undertakers.*

(1) The undertakers shall lay, or cause to be laid at their own expense, that part of the supply pipe which is in or under a street, and carry out, or cause to be carried out, any work on their main which may be necessary for the purpose of connecting the supply pipe therewith.

(2) The undertakers shall also execute on any of the pipes belonging to them any work which shall be necessary to connect therewith such part of the supply pipe as the owner or occupier is under obligation to provide, and any expenses incurred by them in so doing shall be paid by the owner or occupier giving the said notice, and shall be recoverable as a civil debt.

Notwithstanding anything in any Act to the contrary the undertakers shall have the exclusive right of executing any works on any of the pipes belonging to them for the purposes of making such connections.

(3) The undertakers shall complete the construction of the works which they are by this section required to construct as soon as practicable after the requirements of the last preceding section have been complied with, and

* Street to be defined as including any private street or any land laid out as a street.

within fourteen days from the date upon which the owner or occupier has laid the part of the supply pipe which he is, by sub-section (b) of the last preceding section, required to lay.

(4) If the undertakers fail to carry out any obligation imposed upon them by this section, they shall be liable in respect of every such failure to forfeit to the person giving the said notice the sum of five pounds, and a further sum of forty shillings for every day such failure shall continue.

7. Supply pipes under street to be vested in undertakers.

So much of any supply pipe as is situate in or under any street, and as is, at the date of the coming into effect of this part of this Act, connected with the mains of the undertakers, shall from and after that date vest in and be deemed to be the property of the undertakers.

8. Undertakers responsible for maintenance of supply pipes under street.

(1) The undertakers shall at their own expense carry out or cause to be carried out any necessary works of repair, alteration or renewal of that part of any supply pipe which is in or under any street, and any works on their main incidental thereto.

(2) If the undertakers fail to carry out any such necessary work within twenty-one days from the receipt of a request in writing to that effect from the owner or occupier of the premises affected, they shall be liable in respect of every such failure to forfeit to such owner or occupier the sum of five pounds and a further sum of forty shillings for every day such failure shall continue.

9. Power to undertakers to execute works on behalf of consumer.

The undertakers may, by agreement with the owner or occupier, provide or lay, maintain, repair, alter, renew or remove, on behalf of the owner or occupier, any supply pipe, or do any other thing or execute any other works in connection therewith which the owner or occupier is entitled or required to do or execute; and any expenses incurred by the undertakers in so doing shall, unless otherwise agreed, be repaid by the owner or occupier with whom the agreement is made, and be recoverable in the same manner as the water rate.

10. Undertakers may require separate supply pipe.

(1) The undertakers shall not be bound to supply more than one dwelling-house by means of the same supply pipe, and they may, if they think fit, require that a separate supply pipe be provided for each dwelling-house supplied by them with water.

(2) If the owner of any dwelling-house supplied with water by the undertakers, when so required in pursuance of the preceding sub-section, fails within the period of one month after the receipt of such requirement to provide such part of the separate supply pipe as is not to be laid in or under any street, the undertakers may themselves do the work necessary in that behalf, and may recover from such owner the cost incurred in so doing summarily as a civil debt.

11. Maintenance of common pipe.

When several dwelling-houses, or parts of dwelling-houses, in the occupation of several persons are supplied with water by one common pipe, belonging to the several owners or occupiers of such dwelling-houses or parts of dwelling-houses, the said several owners or occupiers shall be liable to contribute the amount of any expenses from time to time incurred by the undertakers in the maintenance, repair and renewal of that part of such pipe as is not in or under any street; and their respective proportions of contribution shall be settled by the officer duly authorised in that behalf by the undertakers.

12. *Provision of stop-cocks.*

(1) A stop-cock, together with the necessary surface-box, on every supply pipe laid down after the coming into operation of this part of this Act shall be provided, protected and maintained by the undertakers in such position as they think fit :

Provided that a stop-cock shall not be provided on that part of any supply pipe which is within the premises of the person receiving the supply, unless the consent in writing of such person shall have been previously obtained. Such consent shall not be unreasonably withheld, and where, in the opinion of the undertakers, the withholding of such consent is unreasonable they may make application to a court of summary jurisdiction, who may make such Order in the matter as the court thinks fit.

(2) Where a stop-cock has been so provided by the undertakers within the premises of the person receiving the supply, the undertakers may, by their authorised officers, enter upon such premises for the purpose of inspecting, repairing, renewing, removing or replacing such stop-cock, or of turning on or turning off by means of such stop-cock the water supplied by them.

13. *Right to demand a domestic supply.*

(1) Every owner or occupier of any dwelling-house or part of a dwelling-house within the limits of supply of the undertakers shall, when he has laid such part of a supply pipe as aforesaid, and paid or tendered the water rate payable in respect thereof according to the provisions of this Act and of the Special Act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes.

(2) If the undertakers fail to carry out the obligation imposed upon them by the preceding sub-section they shall be liable in respect of every such failure to forfeit to the person entitled under that sub-section the sum of five pounds and a further sum of forty shillings for every day such failure shall continue :

Provided that the undertakers shall not be liable as aforesaid if any such failure is due to the failure of the person so entitled to comply with any bye-laws for the time being in force, or to a shortage of water arising from frost, unusual drought, or unavoidable cause or accident of any other nature.

Supplies for domestic and other purposes.

14. *Definition of domestic supply.*

A supply of water for domestic purposes shall mean a sufficient supply of water to any dwelling-house or part of a dwelling-house for ordinary domestic use, including baths of capacity not exceeding the prescribed number of gallons, and water closets, but shall not include a supply of water for any other purpose.

15. *Supply by meter for domestic purposes.*

In lieu of furnishing a supply of water for domestic purposes at the rate prescribed by the special Act for such supply, the undertakers may agree with any person requiring a supply of water for domestic purposes to furnish such supply by meter, and upon such terms and conditions as may be agreed between the undertakers and the person requiring the supply ; and the moneys payable for the supply of water under this section shall be recoverable in the same manner as water rates.

16. *Quasi-domestic supplies.*

(1) The undertakers shall not be bound to supply with water otherwise than by meter—

(a) any building used by an occupier as a dwelling-house whereof any part is used by the same occupier for any trade or manufacturing purpose for which water is required ; or

- (b) any of the following, whether public or private, viz., any poor law institution, hospital, asylum, school or sanatorium ; or
- (c) any other institution whether public or private which is habitually occupied by 12 or more persons ; or
- (d) any boarding-house capable of accommodating at least twelve persons ; or
- (e) any common lodging house ; or
- (f) any club, hotel, public house, inn or restaurant, or any hydropathic establishment.

(ii) The undertakers shall be required to supply, but shall not be bound to supply otherwise than by meter, water required by any factory or other premises used solely for trade for the personal use for sanitary purposes of persons employed therein.

Water for sanitary purposes shall mean water used for drinking purposes and personal hygiene and water required for the flushing of urinals and water-closets and shall not include water used for any other purposes.

(iii) The price to be charged for a supply of water by meter in pursuance of the preceding sub-sections shall not exceed the prescribed price. Provided that the undertakers may make for a supply of water by meter to any of the premises referred to in sub-section (1) above a minimum quarterly charge (exclusive of meter rent) of one-fourth of the annual amount which would be payable according to the scale for the time being in force for a domestic supply furnished to a dwelling-house of the same net annual value.

(iv) Where a person who takes a supply of water from the undertakers for any purposes desires to use for or in connection with a refrigerating apparatus any of the water so supplied, the undertakers may, if they think fit, require that all water used for or in connection with the said apparatus shall be taken by meter on the conditions and paid for at the rates for the time being in force for the supply of water by the undertakers by meter, or may charge for water so used on such other terms as may be agreed between him and the undertakers :

Provided that if the consumer is only taking a supply of water from the undertakers for domestic purposes the minimum sum per quarter which may be demanded by the undertakers for the water used for or in connection with the refrigerating apparatus, if taken by meter, shall not exceed ten shillings.

17. *Supply for other than domestic purposes.*

(i) Subject to the provisions of this Act the undertakers may supply water for other than domestic purposes on such terms and conditions as they think fit, and may supply water for such purposes by meter ; and the moneys payable for the supply of water under this section shall be recoverable in the same manner as water rates ;

Provided that no person shall be entitled to a supply of water for other than domestic purposes if such supply would interfere with the sufficiency of the supply for domestic purposes :

Provided also that the undertakers shall not be liable, in the absence of express stipulation under any agreement for the supply of water for other than domestic purposes, to any penalty or damages for not supplying such water, if the want of such supply arises from frost, unusual drought, or unavoidable cause or accident of any other nature.

(ii) The words " for other than domestic purposes," shall include water used for any of the following purposes :—

- (a) For watering gardens.
- (b) For fountains or any ornamental purposes, and
- (c) (Subject to the provisions of section 16 (ii) above) for any trade, manufacture or business.

Water Rates and Charges.

18. *Rates for supply of water for domestic purposes.*

(i) The undertakers shall, at the request of the owner or occupier of any dwelling-house or part of a dwelling-house entitled under the provisions of this Act or the special Act to demand a supply of water for domestic purposes, furnish to such owner or occupier a sufficient supply of water for such domestic purposes at a rate or rates per annum not exceeding the prescribed rate or rates per annum upon the net annual value of the premises so supplied, and so on, in proportion for any shorter period :

Provided that the undertakers shall not be bound to furnish any such supply as aforesaid for any less sum than the prescribed sum.

(ii) The net annual value of any such premises as aforesaid shall be ascertained by the valuation list in force at the commencement of the period for which the water rate accrues :

Provided that where the water rate is chargeable on the net annual value of a part only of any hereditament entered in the valuation list such net annual value shall be a fairly apportioned part of the net annual value of the whole hereditament ascertained as aforesaid, the apportionment in case of dispute to be ascertained by a court of summary jurisdiction :

Provided also that where the net annual value of any premises does not appear in the valuation list, it shall be determined in the event of dispute by a court of summary jurisdiction.

(iii) Where two or more houses or buildings are connected by any internal means of communication, or by any bridge, subway, yard, or passage, not being a public highway, and such houses or buildings are in occupation of one and the same company or person, they shall be deemed for domestic water rate purposes to be one tenement having a net annual value equal to the aggregate net annual value of the separate houses or buildings.

19. *Additional charges for water used in garages, etc.*

Where water of the undertakers supplied for domestic purposes is used for washing horses, carriages or motor vehicles, or for other purposes in stables, garages or premises where horses, carriages or motor vehicles are kept for private use, the undertakers may, if a hose-pipe, or other similar apparatus is used, charge an additional annual sum not exceeding the prescribed annual sum, and any sums charged under the provisions of this section shall be paid quarterly in advance and be recoverable in the same manner as water rates.

20. *Supply for hosepipe may be metered in certain cases.*

Where water supplied by the undertakers to a person who takes a supply both for domestic purposes and by meter for trade or other purposes is used by him by means of a hose-pipe, or other similar apparatus, for washing horses, carriages or motor vehicles, or for other purposes, in stables, garages, or premises where horses, carriages, or motor vehicles are kept for private use, the undertakers may, if they think fit, require that all water so used by means of such hose-pipe or other apparatus shall be taken by meter and paid for at the rates for the time being in force for the supply of water by meter.

21. *Payment and recovery of water rates.*

Subject to the provisions of this Act and of the Special Act, the water rates shall be paid by and be recoverable from the person requiring, receiving or using the supply of water.

22. *Where several houses supplied by one pipe, each to pay.*

When several dwelling-houses or parts of dwelling-houses in the separate occupation of several persons are supplied by one common pipe, the several owners or occupiers of such dwelling-houses or parts of dwelling-houses shall be liable to pay the same water rate for the supply of water as they would

have been liable to pay if each of such dwelling-houses or parts of dwelling-houses had been supplied with water from the works of the undertakers by a separate pipe.

23. Dates for payment of water rates.

The water rates shall, in England and Wales, be paid in advance either by equal quarterly payments on the first day of January, the first day of April, the first day of July, and the first day of October in each year, or by equal half-yearly payments on the first day of April and the first day of October in each year, as the undertakers may determine, and the first payment shall be made at the time when the supply pipe by which the water is supplied is made to communicate with the pipes of the undertakers or at the time when the agreement to take water from the undertakers is made :

Provided that where, under the provisions of this section, the undertakers determine that the water rates shall be paid by equal half-yearly payments on the first day of April and the first day of October in each year, such rates shall not be recoverable by them until the expiration of two months from the said first day of April and first day of October respectively.

24. Discount for prompt payment of water rates.

The undertakers may, if they think fit, allow discounts or rebates to consumers of water, in consideration of prompt payment of rates for the supply of water for domestic purposes, not exceeding in any case five per centum :

Provided that such discounts or rebates shall be at the same rate under like circumstances to all consumers :

Provided also that, if and so long as the undertakers allow such discounts or rebates, notice of the effect of this enactment shall be endorsed on every demand note for water rates.

25. Payment by persons giving notice of discontinued use.

The owner or occupier of any dwelling-house or part of a dwelling-house liable to the payment of any water rate in respect of the dwelling-house or part of a dwelling-house, who shall give notice of his intention to discontinue the use of the water supplied by the undertakers, or who shall remove from his dwelling between any two quarterly days of payment, shall pay the water rate in respect of such dwelling-house or part of a dwelling-house for the quarter ending on the quarterly day of payment next after the giving of such notice or removal as aforesaid.

A notice for the discontinuance of the supply of water shall not be of any effect unless it is in writing signed by or on behalf of the owner or occupier, and is left at, or sent by post to, the office of the undertakers, or is given by the owner or occupier personally at the office of the undertakers.

26. Rates payable by owners of small houses.

(i) Where the net annual value of any dwelling-house or of any part of a dwelling-house occupied as a separate tenement does not exceed the sum of fifteen pounds the owner, instead of the occupier, shall be liable to pay the water rate :

Provided that when the owner shall pay any water rate in respect of any such dwelling-house or part of a dwelling-house, which shall be in the occupation of any tenant under any lease or agreement made prior to the passing of the Special Act, such tenant shall repay to the owner all sums which shall be so paid by him during the continuance of such lease or agreement unless it has been agreed that the owner shall pay the water rates in respect of such dwelling-house or part of a dwelling-house, and every such sum payable by the tenant to the owner as aforesaid may be recovered, if the same is not paid upon demand, as arrears of rent are recoverable from the occupier by the said owner.

(ii) When a dwelling-house supplied with water is let to monthly or weekly tenants or tenants holding for any other period less than a quarter of a year, the owner, instead of the occupier, shall, if the undertakers so determine, pay the water rate ; but the water rate may be recovered from the occupier and may be deducted by him from the rent from time to time due from him to the owner ;

Provided that no greater sum shall be recovered at any one time from any such occupier than the amount of rent owing by him or which shall have accrued due from him subsequent to the service upon him of a notice to pay the water rate.

(iii) For the purposes of sub-sections (1) and (2) of this section, the powers and provisions contained in this Act, or in the Special Act, for the recovery of water rates from occupiers shall be construed to apply to the owners of any such dwelling-house or tenement as aforesaid, and the person receiving the rents of any such dwelling-house or tenement as aforesaid from the occupier thereof, on his own account, or as agent or receiver for any person interested therein, shall be deemed to be the owner of such dwelling-house or tenement.

27. Recovery of water rates.

(i) If any person supplied with water by the undertakers, or liable as in this Act or in the Special Act provided to pay the water rate, neglect to pay such water rate at any of the said times of payment thereof, the undertakers may, subject as in this Act provided, stop the water from flowing into the premises in respect of which such water rate is payable, by cutting off the pipe to such premises or by such means as the undertakers shall think fit, and may recover the water rate due from such person, if less than twenty pounds, with the expenses of cutting off the water and costs of recovering the water rate, in the same manner as any damages for the recovery of which no special provision is made are recoverable by this or the Special Act ; or if the water rate so due amount to twenty pounds or upwards, the undertakers may recover the same with the expenses of cutting off the water by action in any court of competent jurisdiction.

(ii) Where the owner and not the occupier is liable by law or by agreement with the undertakers to the payment of the water rate in respect of any dwelling-house or part of a dwelling-house occupied as a separate tenement, it shall not be lawful for the undertakers to cut off the water supply for non-payment of the water rate ; but such water rate, without prejudice to the other remedies of the undertakers for enforcing payment thereof from such owner, shall, together with interest thereon at the rate of five pounds per centum per annum, computed from the expiration of one month from the time when the same has been claimed by the undertakers until receipt thereof by the undertakers, be a charge on such dwelling-house in priority to all other charges affecting the premises ; and (without prejudice to such charge) the amount may be recovered, with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates may by law be recovered ;

Provided that proceedings shall not be taken against the occupier until notice shall have been given to him, or left at his dwelling-house, to pay the amount due for water rate out of the rent then due, or that may thereafter become due from him, and he shall have omitted so to pay such water rate :

Provided also that no greater sum shall be recovered at any one time from any such occupier than the amount of rent owing by him, or which shall have accrued due from him since such notice shall have been given or left as aforesaid, and that every such occupier shall be entitled to deduct from the rent payable by him the sum so recovered from him or which he shall have paid on demand.

(iii) In the event of any such water supply being cut off in contravention of the foregoing provisions of this Act, the undertakers cutting off the same shall be liable to a penalty not exceeding five pounds for each day during which

the water shall remain cut off, which penalty shall be recoverable summarily from the undertakers by, and shall be paid to, the person aggrieved.

(iv) If any person refuses or neglects to pay the undertakers any rate or sum due to them under the Special Act, they may recover the same, with costs, in any court of competent jurisdiction ; and their remedy under this section shall be in addition to their other remedies for the recovery thereof.

Waste, Misuse, Undue Consumption and Contamination.

28. Byelaws for preventing waste of water.

(i) The undertakers may make byelaws for the purpose of preventing the waste, undue consumption, misuse or contamination of water supplied by them, and may by such byelaws prescribe the size, nature, materials, workmanship and strength and the mode of arrangement, connexion, disconnexion, alteration and repair of pipes, meters, cocks, ferrules, valves, soil-pans, waterclosets, baths, cisterns and other apparatus (in this section referred to as "water fittings") to be used and forbid any arrangements and the use of any water fittings which may allow or tend to waste, undue consumption, misuse, erroneous measurement or contamination.

(ii) Where the undertakers are a local authority all such byelaws shall be subject to the provisions with respect to byelaws contained in sections 182 to 185 of the Public Health Act, 1875, and also to section 186 of that Act in cases where the undertakers are a local authority other than a municipal corporation.

(iii) Where the undertakers are a company the following provisions shall apply, that is to say—

(a) All such byelaws made by the company shall be subject to the provisions contained in sections 182, 183, 184 and 186 of the Public Health Act, 1875, and all penalties imposed for the breach of any such byelaws shall be recoverable in manner provided by that Act for the recovery of penalties, and those sections shall for the purposes of this section be construed as if the company were a local authority within the meaning of those sections and the secretary of the company were the clerk of the local authority.

(b) A copy of all such byelaws in force for the time being shall be kept at the office of the company within the limits of supply, and all persons may at all reasonable times inspect such copy without payment, and the company shall cause to be delivered a printed copy of all such byelaws for the time being in force to every person applying for the same on payment of a sum not exceeding sixpence for each copy.

(iv) In case of failure of any person to observe such byelaws as are for the time being in force the undertakers may, if they think fit, after twenty-four hours' notice in writing enter and, by and under the direction of their duly authorised officer, repair replace or alter any water fittings belonging to or used by such person and not being in accordance with the requirements of such byelaws, and the expense of every such repair replacement or alteration shall be recoverable by the undertakers as the water rates in respect of the premises are recoverable.

29. Power to supply fittings.

The undertakers may if requested by any person supplied or about to be supplied by them with water furnish to him and repair or alter but shall not manufacture any such pipes valves cocks cisterns baths meters soil-pans waterclosets and other fittings as are required or permitted by their byelaws or regulations, and may provide all materials and work necessary or proper in that behalf and the reasonable charges of the undertakers in providing such materials and executing such work shall be paid by the person requiring the same.

Provided, in cases where the undertakers are a local authority, as follows :—

- (a) The undertakers shall so adjust the charges to be made by them for any such fittings or for the fixing repairing or removal thereof as to meet any expenditure by them under the powers of this section in connection therewith (including interest upon any moneys borrowed for those purposes and all sums applied to sinking fund for repayment of moneys so borrowed) :
- (b) Every sum charged by the undertakers in respect of the provision of such fittings or the repairing fixing or removal thereof shall be clearly stated in every demand note delivered by them to the consumer :
- (c) The total sums expended and received by the undertakers in connection with the purposes in this section mentioned in each year (including interest and sinking fund) shall be separately shown in the published accounts of their water undertakings for such year.

30. *Power to sell meters.*

The undertakers may sell meters and any fittings connected therewith upon and subject to such terms (pecuniary or otherwise) and conditions as they think fit.

31. *Power to let meters, etc., for hire where water is supplied by measure.*

Where the undertakers supply water by measure, they may let for hire to any consumer of water so supplied any meter or other instrument for measuring the quantity of water consumed and any pipes, apparatus and fittings for the conveyance, reception or storage of the water for such remuneration in money as may be agreed upon between them and the consumer, which shall be recoverable in the same manner as water rates.

32. *Water fittings belonging to undertakers not to be subject to distress.*

Any meters, pipes, apparatus and fittings let for hire by the undertakers under the provisions of this Act or the Special Act shall not be subject to distress or to the landlord's remedy for rent, or be liable to be taken in execution under any process of any court or any proceedings in bankruptcy against the persons in whose possession they may be, provided that they have upon them respectively a distinguishing metal plate affixed to a conspicuous part thereof or a distinguishing brand or other mark conspicuously impressed or made thereon sufficiently indicating the undertakers as the actual owners thereof.

33. *Injuring meters, etc.*

Every person who wilfully, fraudulently or by culpable negligence injures or suffers to be injured, any pipe, meter or other instrument for measuring water, or any fittings belonging to the undertakers, or who fraudulently alters the index to any meter or other instrument for measuring water, or prevents any meter or other instrument for measuring water from duly registering the quantity of water supplied, or fraudulently abstracts, consumes or uses water of the undertakers shall (without prejudice to any other right or remedy for the protection of the undertakers) be liable on conviction to a fine not exceeding five pounds and the undertakers may in addition thereto recover the amount of any damage by them sustained.

In any case in which any person has wilfully, fraudulently or by culpable negligence injured or suffered to be injured any pipe, meter, instrument or fittings belonging to the undertakers, or has fraudulently abstracted, consumed or used water of the undertakers, the undertakers may also enter upon the premises occupied by the offender and repair such injury and do all such works, matters and things as may be necessary for ensuring the proper registering by such meter of the quantity of water supplied by means thereof, and the

expense of such repair and of all such works, matters and things shall be repaid to the undertakers by the person so offending and may be recovered by them as water rates are recoverable. The existence of artificial means for causing such injury, alteration or prevention or for abstracting consuming or using water of the undertakers when such pipe, meter, instrument or fittings is or are under the custody or control of the consumer shall be *prima facie* evidence that such injury, alteration, prevention, abstraction, consumption or use, as the case may be, has been fraudulently knowingly and wilfully caused by the consumer using such pipe, meter instrument or fittings.

34. *Provision of cisterns.*

(i) If by the Special Act it is provided that the water to be supplied by the undertakers need not be constantly laid on under pressure, every person supplied with water shall, when required by the undertakers, provide a proper cistern to hold the water with which he shall be supplied with a ball and stopcock in the pipe bringing the water from the works of the undertakers to such cistern, and shall keep such cistern, ball and stopcock in good repair so as effectually to prevent the water from running to waste.

(ii) If any such person shall fail to comply with the requirement of the undertakers to provide such cistern, ball and stopcock, or to keep the same in good repair, the undertakers may cut off the pipe or turn off the water from the premises of such person until such cistern and ball and stopcock shall be provided or repaired as the case may be.

(iii) The undertakers may repair any such cistern, pipe, ball or stopcock so as to prevent any waste of water and the expenses of such repair shall be repaid to them by the person so allowing the same to be out of repair and shall be recoverable by the undertakers as water rates in respect of the premises are recoverable.

35. *Power to provide meters, etc., for prevention or detection of waste.*

Subject to the provisions of this Act, with respect to the breaking up of streets for the purpose of laying pipes, the undertakers may for the purpose of measuring the quantity of water supplied or of preventing or detecting waste affix and maintain meters and other apparatus on the service pipes and mains of the undertakers and stopcocks in the pipes supplying houses with water and may insert in the roads or footways the necessary covers or boxes for giving access and protection thereto, and may for that purpose temporarily stop up, break up and interfere with public and private streets, roads, lanes, footways, courts, passages, tramways, sewers, pipes, wires and apparatus:

Provided that the undertakers shall not interfere with any telegraphic line (as defined by the Telegraph Act, 1878), belonging to or used by the Postmaster-General except in accordance with and subject to the provisions of the said Act.

36. *Register of meter to be prima facie evidence.*

(i) Where the undertakers supply water by measure, the register of the meter or other instrument for measuring water shall be *prima facie* evidence of the quantity of water consumed and in respect of which any water rate or rent is charged and sought to be recovered by the undertakers: Provided that if the undertakers and the person to whom the water is supplied differ as to the quantity consumed, such difference shall be determined upon the application of either party by a court of summary jurisdiction, who may also order by which of the parties any costs of the proceedings before them shall be paid, and the decision of the court shall be final and binding on all parties.

(ii) In the event of any meter used by a consumer of water being proved to register erroneously, such erroneous registration shall be deemed to have first arisen during the then last preceding quarter unless it is proved to have

first arisen during the then current quarter. The amount of the allowance to be made to or of the surcharge to be made upon the consumer by the undertakers shall be paid by or to the undertakers to or by the consumer as the case may be, and shall be recoverable in the like manner as rates for water are recoverable by the undertakers.

37. Power for ascertaining quantity consumed by meter and for removing meters, etc.

(i) Any duly authorised officer of the undertakers may enter any house, building or lands through or into which water is supplied by them by measure in order to inspect the meters, instruments, pipes, apparatus, and fittings for the measuring, conveyance, reception or storage of water, or for the purpose of ascertaining the quantity of water consumed and may from time to time enter any house, building or lands for the purpose of removing any meter, instrument, pipe apparatus or fitting belonging to the undertakers.

(ii) If any person hinders any such officer from entering or making such inspection or effecting such removal, he shall for every such offence be liable on conviction to a penalty not exceeding five pounds; but except with the consent of a justice, this power of entry shall be exercised only between the hours of nine in the forenoon and five in the afternoon.

38. Interfering with valves and apparatus.

(i) Every person who shall wilfully (without the consent of the undertakers) or negligently close or shut off or interfere with any valve, cock or other work or apparatus belonging to the undertakers whereby the supply of water shall be interfered with shall (without prejudice to any other right or remedy of the undertakers) be liable on conviction to a penalty not exceeding five pounds and the undertakers may in addition thereto recover the amount of any damage by them sustained: Provided that this section shall not apply to a consumer closing the valve fixed on his supply pipe.

(ii) Any person being the owner or occupier of any house or building, or part of a house or building, or premises, to or in respect of which he is not for the time being entitled to a supply or the continuance of a supply of water by the undertakers, who shall without the authority of the undertakers turn on any valve cock or other work or apparatus attached to any pipe connected with any main of the undertakers, and provided or available for the purposes of affording such supply, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

39. Penalty for extension or alteration of pipes or apparatus.

(i) It shall not be lawful for the owner or occupier of any premises supplied by the undertakers, or any consumer of the water of the undertakers, or any other person, to affix or cause or permit to be affixed, any pipe or apparatus to a pipe belonging to the undertakers or to a supply-pipe belonging to or used by such owner, occupier, consumer or other person, or to make any alteration in any such supply-pipe or in any apparatus connected therewith, without the consent in writing of the undertakers.

(ii) If any person acts in any respect in contravention of the provisions of this section, he shall for every such offence be liable on conviction to a penalty not exceeding five pounds, without prejudice to the right of the undertakers to recover damages from him in respect of any injury done to their property and without prejudice to their right to recover from him the value of any water wasted misused or unduly consumed.

40. Notice to undertakers of connecting or disconnecting meters.

Before any person connects or disconnects any meter by means of which any of the water of the undertakers is intended to be or has been registered,

he shall give not less than twenty-four hours' notice in writing to the undertakers of his intention to do so and all alterations or repairs and the connecting and disconnecting of meters shall be done at his cost and under the superintendence of any officer or person authorised by the undertakers, and any person offending against this enactment shall for every such offence be liable on conviction to a penalty not exceeding forty shillings.

41. *Penalties for misuse of water.*

(i) Any owner or occupier of any premises supplied with water by the undertakers, who shall supply to any other person or wilfully permit him to take away such water from any cistern or pipe on such premises, unless for the purpose of extinguishing any fire, or unless he is a person supplied with water by the undertakers and the pipes belonging to him are, without his default, out of repair, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

(ii) Any person who, not being supplied with water by the undertakers, wrongfully takes or uses any water from any reservoir, watercourse, conduit or pipe belonging to the undertakers, or from any pipe leading to or from any such reservoir, watercourse, conduit or pipe or from any cistern or other like place containing water belonging to the undertakers or supplied by them for the use of any consumer of the water of the undertakers, shall for every such offence be liable to a penalty not exceeding five pounds.

(iii) Any person who—

- (a) not having from the undertakers a supply of water for other than domestic purposes, uses for other than domestic purposes any water supplied to him by the undertakers; or
- (b) having from the undertakers a supply of water for any purposes other than domestic purposes, uses for any purposes other than those for which he is entitled to use the same any water supplied to him by the undertakers—

Shall for every such offence be liable to a penalty not exceeding forty shillings, without prejudice to the right of the undertakers to recover from him the value of the water misused.

42. *Penalty for waste, etc., of water by non-repair of pipes, etc.*

If any person supplied with water by the undertakers wilfully or negligently causes or suffers any pipe, valve, cock, cistern, bath, soil-pan, watercloset or other apparatus or receptacle to be out of repair, or to be so used or contrived as that the water supplied to him by the undertakers is or is likely to be wasted, misused, unduly consumed or contaminated, or so as to occasion or allow the return of foul air or other noisome or impure matter into any pipe belonging to or connected with the pipes of the undertakers, he shall for every such offence be liable on conviction to a penalty not exceeding five pounds.

43. *Power to repair supply pipes.*

(i) If it should appear to the undertakers that, by reason of any injury to or defect in any supply pipe, which the undertakers are not under obligation to maintain, there is any waste or risk of waste of water or injury or risk of injury to person or property it shall be lawful for the undertakers to execute such repairs as they may think necessary or expedient in the circumstances of the case without being requested so to do; and if any injury to or defect in such supply pipe shall have been ascertained the expense incurred by the undertakers for the purposes of ascertaining the injury or defect and executing the repairs shall be recoverable by the undertakers from the owner of the premises supplied, or in cases where such supply pipe is repairable by the occupier of such premises from the occupier.

(ii) Provided that, except in case of emergency, the undertakers shall not under the powers of this section enter into any house or private premises.

unless they have given to the occupier of such house or premises, and in any case where such supply pipe is repairable by the owner of such house or premises to such owner, not less than twenty-four hours' previous notice of their intention so to enter.

44. Power to repair apparatus of owner or occupier.

Where the owner or occupier after twenty-four hours' notice in writing under the hand of the responsible officer of the undertakers to repair any pipe, tap, valve or other apparatus for the maintenance of which the undertakers are not responsible, in order that the water supplied to him by the undertakers shall not be wasted, fails to repair the same so as to prevent the waste of water the undertakers may repair the same ; and their expenses in that behalf shall be repaid to them by the person so suffering the same to be out of repair, and the undertakers may recover the same in the same manner as the water rate and in addition to the penalty (if any) recoverable for the offence.

45. Power to cut off water.

If any person supplied with water by the undertakers wrongfully does or causes or permits to be done anything in contravention of any of the provisions of this Act or the Special Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption or contamination of the water of the undertakers, they may (without prejudice to any remedy against him in respect thereof) cut off any of the pipes by or through which water is supplied by them to him or for his use, and may cease to supply him with water so long as the cause of injury remains or is not remedied.

46. Power of entry to detect waste.

Any duly authorised officer of the undertakers may between the hours of nine in the forenoon and five in the afternoon enter into any dwelling-house or premises supplied with water by the undertakers in order to examine if there be any waste or misuse of such water, and, if such officer at any such time be refused admittance into such dwelling-house or premises for the purpose aforesaid, or be prevented from making such examination as aforesaid, the undertakers may turn off the water supplied by them from such dwelling-house or premises.

Financial Provisions affecting Companies.

47. Reserve and Contingency Funds.

(i) The undertakers may, if they think fit, form a reserve fund by setting apart in any year out of the clear profits of the undertaking such sum as they may determine (subject to the limits hereinafter prescribed) for the purpose of answering any deficiency which may at any time happen in the amount of divisible profits, or of meeting any extraordinary claim or demand which may at any time arise against them.

(ii) The undertakers may also, if they think fit, form a contingency fund by setting apart in any year out of the clear profits of the undertaking such sum as they may determine (subject to the limits hereinafter prescribed) for the purpose of meeting contingencies, or for payment of the cost of renewing, repairing, enlarging or improving any part of the works forming part of the undertaking.

(iii) If either of such funds be at any time reduced it may thereafter be again restored within the limits hereinafter prescribed, and so from time to time as often as such reduction shall happen.

(iv) Any sums so set apart for the formation of a reserve or contingency fund as aforesaid may from time to time be invested in Government or other securities in which trustees are authorised to invest trust moneys, and the

dividends and interest arising from such securities may also be invested in the same or like securities in order that the same may accumulate at compound interest.

(v) The aggregate amount standing to the credit of the reserve fund and contingency fund shall not together at any time exceed a sum equal to ten per centum of the capital for the time being expended by the undertakers for the purposes of the undertaking. Whenever the reserve fund and contingency fund shall together amount to this sum the interest and dividends on the funds shall no longer be invested but shall be applied to any of the general purposes of the undertaking to which the profits of the undertakers are applicable.

(vi) The aggregate amount which may be carried by the undertakers in any year to the formation or restoration of the reserve fund and contingency fund shall not together exceed a sum equal to one per centum of the capital for the time being expended by the undertakers for the purposes of the undertaking.

(vii) The undertakers shall transfer to any reserve fund or contingency fund formed under the foregoing provisions any sum then standing to the credit of any existing reserve fund or contingency fund as the case may be.

48. *Limitation on carry forward.*

It shall not be lawful for the undertakers to carry forward at the end of any year to the credit of the profit and loss (net revenue) account any sum exceeding the total of the following amounts (that is to say) :—

- (a) the amount required by the undertakers for paying any dividend or interest which the undertakers are entitled or required to pay but have not paid in respect of that year ;
- (b) an amount equal to the total sum which the undertakers would be lawfully entitled to distribute as dividends on their preference and ordinary capital in respect of the next following year ; and
- (c) an amount equal to the total sum which the undertakers will be required to pay during the next following year as interest on any mortgages or debenture stock.

49. *Revision of Water Rates.*

If it appears to the Minister of Health on the application of the council of any county, borough, urban or rural district having jurisdiction within the limits of supply of the undertakers, that the divisible profits of the undertakers for the preceding year have exceeded the amount required for the payment of dividends upon the share capital of the undertaking at the maximum rates authorised in the case of the undertaking and that the reserve fund and contingency fund together amount to the prescribed maximum sum, the Minister may by Order make such reduction in the rates and charges, which the undertakers are authorised to levy, as he considers reasonable. Provided that the rates and charges as so reduced shall be sufficient to enable the undertakers (after paying all proper expenses of and in connection with the working, management and maintenance of the undertaking and making good depreciation and providing for any contributions which the undertakers may carry to any reserve fund or contingency fund formed under the provisions of this Act, and paying all other costs, charges and expenses (if any) properly chargeable to revenue) to continue to pay dividends upon the share capital of the undertaking at the maximum rates authorised.

The Minister may amend any Order made in pursuance of this section after the expiration of five years from the date of such Order upon the application of the undertakers or of any such council as aforesaid.

Lands.*50. Acquisition of easements only in certain cases.*

(i) The undertakers may, in lieu of acquiring any lands for the purposes of the works authorised by this Act where the same are intended to be constructed underground, acquire such easements only in such lands as they may require for such purposes and may give notice to treat in respect of such easements, describing the nature thereof, and the provisions of the Lands Clauses Acts shall apply to and in respect of the acquisition of such easements as fully as if the same were lands within the meaning of those Acts.

(ii) As regards any lands in respect of which the undertakers have acquired easements only under the provisions of this section, the undertakers shall not be required or entitled to fence off or sever such lands from the adjoining lands but the owners or occupiers for the time being shall, subject to such easements, have the same rights to use and cultivate the said lands at all times as if this Act had not passed.

51. Persons under disability may grant easements, etc.

Persons empowered by the Lands Clauses Acts to sell and convey or release lands may if they think fit subject to the provisions of those Acts and of this Act grant to the undertakers any easement right or privilege (not being an easement right or privilege of water in which persons other than the grantors have an interest) required for the purposes of the Act in over or affecting any such lands, and the provisions of the said Acts with respect to lands and rent charges so far as the same are applicable in this behalf shall extend and apply to such grants and to such easements rights and privileges as aforesaid respectively.

52. Power to retain and use or sell, etc., land.

Notwithstanding anything in the Lands Clauses Act or in any other Act or Acts to the contrary the undertakers may retain, hold and use for the purposes of their undertaking for such time as they think fit any lands for the time being belonging to them and may from time to time sell, lease, exchange or otherwise dispose of the same in such manner for such consideration and on such terms and conditions as they think fit, and may execute and do any deed, act or thing proper for effectuating any sale, lease, exchange or disposition, and on any such sale, lease, exchange or disposition may reserve to themselves all or any part of the water rights or other easements belonging thereto and may make the sale, lease, exchange or disposition subject to such reservations accordingly, and may also make any such sale, lease, exchange or disposition subject to such other reservations, special conditions, restrictions and provisions with respect to the use of water exercise of noxious trades or discharge or deposit of manure, sewage or other impure matter and otherwise as they may think fit.

53. Owners may be required to sell parts only of certain lands and buildings.

(1) And whereas in the construction of the works by this Act authorised or otherwise in the exercise by the undertakers of the powers of this Act it may happen that portions only of certain properties shown or partly shown on the deposited plans will be sufficient for the purposes of the undertakers and that such portions or some other portions less than the whole can be severed from the remainder of the said properties without material detriment thereto: Therefore the following provisions shall have effect:—

(i) The owner of and persons interested in any of the properties whereof the whole or part is described in the Schedule to this Act and whereof a portion only is required for the purposes of the undertakers or each or any of them are hereinafter included in the term “the owner” and the said properties are hereinafter referred to as “the scheduled properties.”

(ii) If for twenty-one days after the service of notice to treat in respect of a specified portion of any of the scheduled properties the owner shall fail

to notify in writing to the undertakers that he alleges that such portion cannot be severed from the remainder of the property without material detriment thereto he may be required to sell and convey to the undertakers such portion only without the undertakers being obliged or compellable to purchase the whole the undertakers paying for the portion so taken and making compensation for any damage sustained by the owner by severance or otherwise :

(iii) If within such twenty-one days the owner shall by notice in writing to the undertakers allege that such portion cannot be so severed the tribunal to whom the question of disputed compensation shall be submitted (in this section referred to as " the tribunal ") shall in addition to the other questions required to be determined by it determine whether the portion of the scheduled property specified in the notice to treat can be severed from the remainder without material detriment thereto and if not whether any and what other portion less than the whole (but not exceeding the portion over which the undertakers have compulsory powers of purchase) can be so severed.

(iv) If the tribunal determine that the portion of the scheduled property specified in the notice to treat or any such other portion as aforesaid can be severed from the remainder without material detriment thereto the owner may be required to sell and convey to the undertakers the portion so determined to be severable without the undertakers being obliged or compellable to purchase the whole the undertakers paying such sum for the portion taken by them including compensation for any damage sustained by the owner by severance or otherwise as shall be awarded by the tribunal.

(v) If the tribunal determine that the portion of the scheduled property specified in the notice to treat can notwithstanding the allegation of the owner be severed from the remainder without material detriment thereto the tribunal may in its absolute discretion determine and order that the costs charges and expenses incurred by the owner incident to the determination of any matters under this section shall be borne and paid by the owner.

(vi) If the tribunal determine that the portion of the scheduled property specified in the notice to treat cannot be severed from the remainder without material detriment thereto (and whether or not it shall determine that any other portion can be so severed) the undertakers may withdraw their notice to treat and thereupon they shall pay to the owner all costs charges and expenses reasonably and properly incurred by him in consequence of such notice.

(vii) If the tribunal determine that the portion of the scheduled property specified in the notice to treat cannot be severed from the remainder without material detriment thereto but that any such other portion as aforesaid can be severed the undertakers in case they shall not withdraw the notice to treat shall pay to the owner all costs charges and expenses reasonably and properly incurred by him in consequence of such notice or such portion thereof as the tribunal shall having regard to the circumstances of the case and their final determination think fit.

(2) The provisions of this section shall be in force notwithstanding anything in the Lands Clauses Consolidation Act 1845 contained and nothing contained in or done under this section shall be held as determining or as being or implying an admission that any of the scheduled properties or any part thereof is or is not or but for this section would or would not be subject to the provisions of section 92 of the Lands Clauses Consolidation Act, 1845.

(3) The provisions of this section shall be stated in every notice given thereunder to sell and convey any premises.

54. Compensation in case of recently acquired interest.

For the purposes of determining any question of disputed compensation payable in respect of lands taken under the powers of this Act, the tribunal shall not award any sum of money for or in respect of any improvement alteration or building made, or for or in respect of any interest in the land

created, after the prescribed day, if in the opinion of the tribunal the improvement alteration or building or the creation of the interest in respect of which the claim is made was not reasonably necessary and was made or created with a view to obtaining or increasing compensation under this Act.

55. *Extinction of private rights of way.*

All private rights of way over any lands which the undertakers are authorised by this Act to acquire compulsorily shall as from the date of the acquisition of such lands by the undertakers be extinguished : Provided that the undertakers shall make full compensation to all persons interested in respect of any such rights and such compensation shall be settled in manner provided by the Lands Clauses Acts with reference to the taking of lands otherwise than by agreement.

56. *Purchase of additional lands by agreement.*

(i) Subject to the provisions of this Act the undertakers in addition to any other lands acquired by them in pursuance of this Act may by agreement purchase take on lease acquire and hold further lands for the purpose of this Act or of their water undertaking but (except with the consent of the Minister of Health) the quantity of lands held by the undertakers in pursuance of this section shall not at any time exceed the prescribed number of acres and the undertakers may on all or any of such additional lands execute for the purposes of or in connection with their waterworks any of the works (other than wells and works for taking or intercepting water) and exercise any of the powers mentioned in or conferred by section 12 (undertakers subject to provisions of this and the Special Act may execute the works herein named) of the Waterworks Clauses Act 1847.

(ii) Provided that the undertakers shall not create or permit the creation or continuance of any nuisance on any such lands nor erect any buildings thereon except offices and dwellings for persons in their employment and such buildings and works as may be incident to or connected with their water undertaking but the restrictions of this section as to the erection of buildings shall not apply in respect of lands leased or sold by the undertakers.

APPENDIX B.

Comparative reference table showing scope of the proposed revision of the
Waterworks Clauses Acts.

1. Waterworks Clauses Act, 1847.

| Existing sections. | Suggested amendments and additions. |
|------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ss. 2 & 3. Definitions | Not considered ; but attention is drawn to paragraphs 16 and 33 in connection with the words "dwelling-house" and "street", and to clause 4 of Appendix A as to "supply-pipe." |
| Ss. 4 & 5. Incorporation of Act, etc. | |
| Ss. 6-15. Construction of Works | No alteration suggested. |
| Ss. 16 & 17. Accommodation Works. | No alteration suggested. |
| Ss. 18-27. Mining Code | Consideration deferred ; see paragraph 117. |
| Ss. 28-34. Breaking up of streets for the laying of pipes. | General consideration deferred ; see paragraphs 118 and 119. But as to :— (1) Laying of mains on private lands—paragraphs 195-197. (2) Mains in private streets—paragraph 198. (3) Breaking up of streets outside limits of supply—paragraph 199. |
| S. 35. Obligation to supply .. | Amendments recommended—paragraphs 11-16. Additional clauses (requisition and guarantees by local authorities)—paragraphs 17 and 18. |
| Ss. 36 & 37 (consequential to S. 35) | No alteration suggested. |
| Ss. 38-43. Fire hydrants .. | Not considered. |
| Ss. 44-47. Supply pipes to houses of limited value. | Repeal suggested—paragraph 39. |
| Ss. 48-53. Supply pipes | Repeal suggested, in favour of new code of clauses—paragraph 19-38. |
| Ss. 54-60. Waste and misuse of water. | New consolidated code recommended paragraphs 70-89. |
| Ss. 61-67. Fouling of the undertakers' water. | No general amendment suggested.—Attention drawn to the modifications of Ss. 61 & 62, and certain additional provisions, recommended in Report on Underground Water—paragraphs 90-92. |
| Ss. 68-74. Levy and recovery of water rates. | Consolidated code suggested—paragraphs 44-47, 57-69. |

| Existing sections. | Suggested amendments and additions. |
|-----------------------------------------------|-------------------------------------------------------------------------------------|
| Ss. 75-83. Financial provisions | Revised clauses recommended—paragraphs 93-105. |
| S. 84. Tender of amends.. .. | No alteration suggested in Ss. 75 & 83. Repealed by Statute Law Revision Act, 1894. |
| Ss. 85-89. Recovery of damages and penalties. | Not considered. |
| Ss. 90-94. Miscellaneous provisions | Not considered. |

2. Waterworks Clauses Act, 1863.

| Existing sections. | Suggested amendments and additions. |
|------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| Ss. 1 & 2 | Not considered. |
| Ss. 3-11. Security of Reservoirs | Consideration deferred—see paragraph 120. |
| Ss. 12 & 13. Domestic and Other Purposes. | General review of domestic, quasi-domestic and non-domestic supplies—paragraphs 40-56. |
| Ss. 14 & 15. Meters, and Ss. 16-20. Waste and misuse .. | Substantially embodied in clauses relating to waste and misuse of water—paragraphs 70-89. |
| S. 21. Recovery of rates .. | Incorporated in new code relating to the levy and recovery of rates—paragraphs 57-69. |



ROYAL SANITARY INSTITUTE

LIBRARY REGULATIONS

1. Books may be borrowed by Fellows, Members and Associates personally or by a messenger producing a written order. The person to whom books are delivered shall sign a receipt for them in a book provided for that purpose.

2. Books may be sent through the post, or by some equivalent means of carriage, upon a written order. All charges of carriage to the Institute shall be defrayed by the borrower.

3. A borrower may not have more than three volumes in his possession at one time.

4. A borrower will be considered liable for the value of any book lost or damaged while on loan to him, and if it be a separate volume, for the value of the whole work rendered imperfect.

Marking or writing in the volumes is not permitted, and borrowers are requested to call attention to damage of this character.

5. Books may be retained for 28 days. Periodicals may be retained for 14 days. Applications for extension of the loan period must be made in writing before its expiry. No book may be kept longer than 3 months.

New books will not be lent until after the expiration of one month from the date of their having been received by the Institute. The current number of a periodical may not be borrowed.

6. Borrowers retaining books longer than the time specified, and neglecting to return them when demanded, forfeit the right to borrow books until the volume or volumes be returned, and for such further time as may be ordered.

Any borrower failing to comply with a request for the return of a book shall be considered liable for the cost of replacing the book, and the Council may, after giving due notice to him, order the book to be replaced at his expense.

No volume may be reissued to the same borrower until at least seven days have elapsed after its return, neither may it be transferred by one borrower to another.

7. Books may not be taken or sent out of the United Kingdom.

8. Volumes returned through the post must be securely packed in a box, or otherwise protected.

Parcels should be addressed :

THE ROYAL SANITARY INSTITUTE,
90, BUCKINGHAM PALACE ROAD,
LONDON, S.W.1.

THE ROYAL SANITARY INSTITUTE LIBRARY
90, Buckingham Palace Road, London, S.W.1.

Class No.

A R/17

Acc. No.

This book is returnable on or before the last date Marked below.

10 APR 1947

8 JUNE 1947

20 FEB 1953